

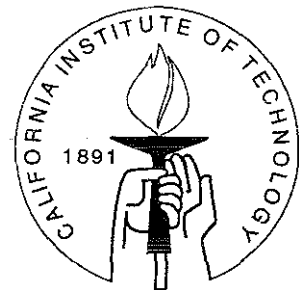
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Russia's Transition to Democracy: Essays 1-10

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Abstract

The ten essays contained herein are the first in a series of twenty prepared for translation into Russian and publication in Moscow's *Independent Gazette*. Their translation into Russian will incorporate a number of details particular to Russia that are not included in the current English versions. In any event, these essays are predicated on the assumption that Russians know democracy only in superficial and sometimes inaccurate ways -- that they fail to appreciate the interrelationships of constitutional institutions, of extra-constitutional structures, and of the give-and-take of democratic process that sometimes seems chaotic to those unaccustomed to the interplay of these institutions and structures. Support for this project was provided by the University of Maryland's project on Institutional Reform and The Informal Sector (*IRIS*). We also would like to thank Olga Shvetsova for her suggestions on topics that require coverage and her comments on the essays' specific content.

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Russia's Transition to Democracy: Essays 1-10

1. A Democratic Russia: Just Another Ill-Conceived Experiment?

As citizens slumber with resignation and foreboding, draft constitutions are prepared, discussed, rejected, and rewritten; political leaders, mouthing patriotic slogans, follow the dictates of unrestrained personal ambition; public officials consolidate their power; days are spent debating the name of a country that threatens dissolution; optimistic economic projections yield only new projections of a similar form; the ruble threatens to become Russia's chief export -- as wallpaper; and executive and legislative branches contend for supremacy in a disintegrating state. As the pie shrinks, the self-serving fight harder for their piece, and citizens in general scramble for crumbs. The basis for pessimism are everywhere, and it is not unreasonable for Russia's citizens to react to their brief experiment with democracy with the plea "please ... no more experiments!"

Certainly, Russians today confront one of the most daunting tasks that has ever challenged a people. New political institutions must be designed and set in place and new traditions of political discourse must be invented to guide the evolution of revolutionary economic relations at a time of severe economic dislocation. Although similar challenges may have confronted smaller and less complex societies, few people of a continental scope with global interests have attempted such a transition under such circumstances. Nevertheless, as daunting as the task appears, there are reasons for believing that the challenge can be met. First, there are the facts of Russia's highly educated citizenry, her generously endowed geography, and her rich cultural heritage. Second, there is the evident desire of the Russian people for a just society. And third, Russia has the opportunity to benefit from the experiences of those other states that have sought to move from autocratic to democratic rule. Some of these attempts have been successful; a great many others have been otherwise. But those experiences, successful or otherwise, offer valuable lessons for those who seek a stable and prosperous Russia.

In fact, despite its recent appearance in Russia, democracy is no longer an experiment. More than two hundred years have passed since the Americans implemented their constitution, and we have learned a great deal in the interim. The study of politics remains an imperfect science, and no one argues that democracy can be implemented quickly and easily in a society experiencing severe economic deprivation and ethnic conflict. But one fact is clear -- democracy takes root if society has the will abide by its rules and if everyone is conscious of that will.

Hence, in this and a number of essays to follow, we will survey the lessons of democracy offered by its successes and failures. Setting these lessons in the context of current circumstances, we will proceed under the supposition that with but some nurturing and attention to proper matters, democracy and prosperity will come to Russia. We proceed on this journalistic venture first and most importantly because everyone who seeks to find their way in a new democratic state must become familiar with its operation, must understand what it is that democratic process can and cannot do, and

must appreciate their responsibilities in it. The failure of any significant part of society to understand these things is the fertile ground upon which the potential despot sows his seed. We also address those with political ambition. Any significant failure to appreciate the role of constitutional limits on action, such as the sanctity of a free press (however personally uncomfortable that freedom might seem from time to time), of the necessity for upholding the rule of law even when adherence to it yields outcomes with which one disagrees, and of the conflicts inherent in the colloquy of a free people dooms a political system to instability or ineffectiveness.

Just as people must learn the grammar of their language to avoid being misled by those who would take advantage of their illiteracy, people must learn the grammar of democratic politics. Most of us learn language at an age when we are barely conscious of the fact of our learning. And although most of us cannot formally specify grammatical rules, we abide by those rules instinctively and leave formal understanding to linguists and teachers. So it is with the rules of democratic process. Few Americans, Costa Ricans, Swedes, Swiss, or Germans, can recite constitutional clauses; but these citizens possess an instinctive understanding of the rules of democratic process. In contrast, Russia must learn and adapt to a "language" with which they are largely unfamiliar. And as with any new language, the initial stages of learning will result in innumerable errors and frustration.

Fortunately, the "grammatical rules" of democratic process are not complex. But "grammatical errors" here can be especially dangerous, so steps must be taken to minimize their occurrence. Part of the process of learning these rules is to understand what is of primary importance and what is of secondary concern, and to appreciate that the things that are discussed most loudly are not always the most important issues. For example, although the relative power of a president versus a legislature is not unimportant, focusing on this issue alone can distract us from even more fundamental concerns. Such debates often only reflect a power struggle among a small coterie of persons, so that only the struggle itself effects us -- not its ultimate resolution. Political systems have survived and prospered with weak presidents (e.g., Finland and Austria) and with strong ones (e.g., America, France, Costa Rica). And most systems have seen the powers of a president change with circumstances. America began with a constitutionally weak president that was transformed by the personalities that held office (Washington, Jackson, Lincoln); it entered its post Civil-War period in 1870 with a considerably weaker office that was transformed once again in this century by such leaders as Roosevelts, Johnson and Reagan. In fact, other matters such as the composition of Russia's federal system and the ways in what that system influence inter-ethnic and territorial conflicts are the things that ultimately determine Russia's stability. The relevance of presidential versus legislative powers is important primarily to the extent that it is part of the equation determining federal relations.

More generally, one of the things we want to accomplish in this column is to bring the reader's attention what it is that is of central importance in structuring the democratic state and what is merely

of derivative concern. Of necessity, we will discuss such issues as: the advantages and disadvantages of presidential government; the rights a constitution can and cannot be expected to protect; alternative relationships between legislative and executive branches of government; the essential components of a federal state; the advantages to ethnically distinct societies of participating in such a state; the role of political parties in ameliorating conflict; and the influence on parties of alternative electoral procedures, designs of representative assemblies, and federal relationships. At times we will focus on details such as the advisability of constitutional emergency and secession clauses, the organization of political parties, and alternative voting procedures; at other times we will discuss more general things such as the obligations of democratic citizenship and the legitimate political function of "non-political" organizations.

However, in discussing such things we will attempt to show how these various pieces "fit together;" how each is part of a general mosaic that determines the operation of a democratic state; and why it is impossible, generally, to discern the impact of one component of the design without assessing its function relative to all other components.

More generally, most of the things that will concern us will focus on the institutional components of a democracy -- constitutional design, election laws, and legislative and executive prerogatives. This is as it should be because the **first lesson of democracy** is that all democratic processes proceed in accordance with rules and procedures, both implicit and explicit, that lie outside the control of any single individual or oligarchy. The solution to Russia's current problems does not require that we find the "right leader" or implement precisely the "right policy." Although we prefer to avoid incompetent leadership or foolhardy policy, the solution resides ultimately in establishing political institutions and traditions that will direct the actions of political leaders and society's citizens in the right way.

In the democratic state, persons will be elected to high office with gross deficiencies of character and talent -- democracy does not ensure perfection in our choices (many a fool has been called to leadership in even the most stable and prosperous democracy). But if our political institutions are well-crafted and if we hold a consensual or near-consensual determination to abide by the rules of those institutions, then the normal processes of the democratic state will compensate for such deficiencies.

The experiences of other states also tell us that the institutions of democracy come in many forms -- there is no singularly perfect design. However, the **second lesson of democracy** is that, regardless of the structure ultimately agreed to, the pieces must fit together and match contemporary circumstances. In Russia today, of course, the most salient matters are: a tradition of strong, centralizing leadership that has too easily fallen prey to despotism; a society imbued with a deep sense of patriotism but divided by innumerable regional, ethnic, linguistic, and religious loyalties; and an economy that functions imperfectly if it functions at all, but any change necessarily requires severe

social dislocation and personal hardship. Russia's new political institutions must provide a way to contend with these realities. But they can contend successfully only if together they establish incentives on everyone's part to seek peaceful resolutions or, minimally, to forego conflict even if individuals experience temporary policy setbacks.

The **third lesson of democracy**, though, is that the conflicts inherent in these realities cannot be negotiated at the same time as a new democratic state is designed and implemented. The Americans, for example, sought to negotiate two conflicts in their constitutional document -- the dominance of large states over small ones and the future of slavery. The first conflict soon proved irrelevant and today Americans take little note of the fact that small and seemingly insignificant states such as New Hampshire or Delaware share equal representation in one branch of the legislature with California, which if an independent country, would place it in the top rank of global economies. And by attempting a constitutional resolution of the second conflict, the Americans merely set the stage for their civil war -- one of the bloodiest wars in human history to that time.

Russia, then, must focus on the institutional structures it will employ to guide the resolution of whatever conflicts exist today and in the future. She must do this with the understanding that the exact form of that resolution as well as the nature of future conflicts cannot be predicted with certainty. But if her institutions are designed well, the people's interests will ultimately be served.

The **fourth lesson of democracy** is that citizens should be expected to favor politicians who espouse policies they perceive to be in their interest and to oppose (by legal means) those who advocate contrary measures. That is their right. But at the same time, they must learn that political leaders should not be judged merely on the basis of the policies they advocate, however attractive or unattractive the emotional appeal. Their commitment to democratic process is equally if not more important. People should be prepared to support the politician, citizen, or organization that, even when advocating an unfavorable policy, does so in conformity with democratic practice; and they should be prepared at the same time to oppose those who, regardless of the seeming attractiveness of the policies they advocate, proceed otherwise. At the same time, those with political ambition should appreciate that other countries honor the founders of their democracies not because of any particular policy -- only the professional historian recalls specifics. Instead, they are honored because of their commitment to democratic process that was sustained in the face of seemingly inescapable imperatives to act otherwise.

Much of what we have said, of course, may seem utopian. But our task in the essays to follow will be to show that aspiring to these ends is not mere utopianism -- that there are practical ways to achieve them. The rules of democracy we offer here are something more than mere exhortations. Political institutions can be designed so that people will find it in their self-interest to act in accordance with these rules. Two hundred years ago, James Madison wrote in defense of the

American constitution that "the seeds of faction are sown in the nature of man," and that "if men were angels, no government would be necessary." Proceeding under these same assumptions keeps us from utopian fallacies and, with the success of other societies in mind, disallows undue pessimism.

2. Constitutional Rights: Mere Words or Sustainable Guarantees?

Russia is schizophrenic. On the one hand, it is skeptical about democracy as a route to a prosperous future and, based on experience, about the value of a constitution as a meaningful guarantor of individual rights and civil liberties. On the other hand, those who would write a democratic constitution offer drafts replete with promises, directives, and rights in the apparent belief that every word will be faithfully executed, or at least that any ambiguity will necessarily yield distasteful results.

Addressing the sources of this schizophrenia and achieving any resolution of it requires that we move to first-principles -- to the ways in which democracy achieves the end of preserving an expanding individual rights. We begin by noting that establishing any state requires granting its various parts the right to coordinate society, through coercion if necessary, so it can accomplish things it cannot accomplish otherwise. Thus, acting as our agent, we allow the state to tax and to spend, to draft, to legislate, and, in the event of illegality, to imprison. In ages past this coercive and coordinative function, serving the interests of a small elite, fell to monarchs. Today, democracies are constituted with the understanding that the state should serve only with the consent of the governed and that the governed hold the ultimate voice in how the state acts.

The great trick of democratic design, though, lies in constructing the state so that public officials do not exceed their authority. And an important part of this "trick" is the constitution, which in addition to defining the components the state and their relationship to each other and to the people, sets limits on the state's power. But in drafting such a document two great questions arise. The first is: How can a piece of paper control anything, let alone those who direct the state's coercive parts and who might aspire to despotism or whose ego might lead them to believe that only they know what is best? The second question is: What is it that properly belongs in such a document -- what should be made specific, what should be made ambiguous, and what issues should it confront?

These two questions converge when drafting constitutional guarantees of fundamental rights -- those individual rights that define a free and just society. Some of these rights are well-understood and appear in virtually every democratic constitution, such as a guarantee of religious freedom, of the freedom of the press, of the right to peaceful assembly, of the inviolability of personal property, of equality in the right to vote, and of the right to a speedy and fair trial. The inclusion of other rights are more controversial, such as the right to equal housing, employment, and just compensation for labor. Our two questions, then, combine to form a third, namely: Why is this second category

of rights -- found in earlier Soviet and some Western European constitutions -- controversial whereas those in the first category are not?

Before we address this question, there is a related matter that requires attention -- the advisability of including citizen obligations or duties in a constitution. Put simply, such clauses -- requiring, for example, that "man's exercise of his rights and liberties must not ... be detrimental to the public weal or surrounding environment," that "everyone ... display concern for the preservation of the historical and cultural heritage ...," that "everyone ... pay taxes ... in the procedure and amounts established by law" or that "parents have the obligation to raise and support their children" -- pervert the function of the constitution, serve no useful purpose, and are dangerous. First, they pervert constitutions because they diffuse the original intent of such documents -- keeping states from tyranny. Thus, a constitution defines and places limits on the state and not on the sovereign, the people. Second, such clauses serve no useful purpose, because, if people choose to place limits on themselves, they can do so through their representative assemblies, via the laws they allow those assemblies to pass. Finally, such lists are dangerous because they establish the precedent that, beyond ensuring that no person infringes on the rights of any other, the constitution can be used to control and limit rights rather than expand and protect them.

Of course, we should not suppose that such clauses arise from sinister motives. Rather, we can attribute them to the fear of ambiguity, especially when it appears that the full expression of one person's rights might conflict with some other person's or "with the public weal." But here it is best to rely on a legislative or judicial resolution. If the other parts of our constitution are designed well, we can rely on the institutional structure a constitution establishes to reach a just accommodation (and, as we argue shortly, if they are designed poorly, then it matters little what rights we specify). Moreover, the process of adjudicating rights, if done in the context of a political system that is itself deemed legitimate, can move us to a new consensus on rights far more easily than any convoluted constitutional language.

Turning then to our central question -- about rights that belong in a constitution -- part of the answer is provided by noting that certain rights ("aspirations") can be provided through the normal processes of government if other rights are secure. If citizens remain free to engage in political discourse, free to be informed by a viable press, and free to vote to displace one set of leaders with another, then they can use the agencies of the state so as to secure such aspirations as fair compensation for labor (minimum wage legislation), safe working conditions (occupational safety regulations), adequate housing (state housing subsidies based on income, a viable banking system for financing private housing loans), pensions (social security), and health care (public health insurance, government sponsored medical research). But if they lose their basic rights, then attainment or retention of these things is at best problematical and at worst, subject to the whim of an otherwise

tyrannical state. Indeed, a society unable to partake of its fundamental rights has no protection against the avaricious official who acts in his or her narrow self-interest, regardless of the aspirations otherwise provided for in a constitution.

This is not to say that it is improper to cite aspirations. But they should be identified as flexible goals, rather than as inflexible constraints. Clauses outlining a legislature's jurisdiction, for example, can admonish the state to be concerned with just compensation for labor, adequate health care, and the sanctity of private contracts consensually agreed to. On the other hand, a requirement that the state *ensure* just compensation or *guarantee* medical care opens the door to contentious judicial and political processes as people attempt to decide whether, for example, specific pieces of legislation move us close enough to the required goal. Should we declare a medical care bill unconstitutional because it only takes us part way to a wholly comprehensive solution to public health or would we prefer the view such legislation is an essential first step toward satisfying such a goal? More problematical is the fact that the state may be unable to satisfy such requirements, in which case its failure to satisfy these "rights" undermines people's confidence that it will act to ensure any other.

Basic rights and aspirations, then, ought to be cleanly differentiated within a constitution. Indeed, drafters of constitutions should seriously consider whether aspirations should be made irrelevant to a court's deliberations over the constitutionality of legislation, because in these instances the court can focus on whether the implementing legislation is in conformity with other parts of the constitution, most notably the fundamental rights it provides for.

Turning, then, to fundamental rights, the safest way to approach matters is with a healthy dose of cynicism about how government officials will try to interpret various provisions. The prudent assumption is that these officials -- legislators, bureaucrats, and the like -- will operate in their own self-interest, regardless of whether that interest corresponds to society's. And although the other parts of the constitution should ensure that these motives are the correct ones, history has taught us the value of additional precautions.

Among these precautions is a succinct statement of each right. Long, convoluted clauses cannot substitute for simple admonitions. Compare, for example, the provision that the legislature "shall pass no law abridging the freedom of the press" with the more ambiguously identified 'right' that "the media are free ... [but] the seizure and confiscation of information material and the hardware for its preparation and transmission are permitted only in accordance with a ruling by a court of law." Although such qualification may be designed to clarify, to qualify, and to render a constitution flexible in the event of unforeseen contingencies, it opens the door to judicial confusion as to original intent, and gives both the bureaucrat and politician room to circumvent that intent. Clear and direct

specifications of rights provide the court, moreover, with a valuable weapon in their defense of rights and in their inevitable conflicts with executive and legislative branches over them.

It may be true, of course, that society may choose to adhere to certain qualifications (like a prohibition against shouting "fire" in a crowded theater). But as with those instances in which rights might conflict, the way in which such qualifications are best arrived at as a social consensus reached through the operation of legitimate political process rather than through constitutional edict. If consensual -- if such qualifications assume the role of a social norm about civil conduct -- then they can be easily specified and enforced through normal channels of legislation.

We arrive finally at the most fundamental question, namely: How are basic rights enforced? Certainly we should not suppose that merely setting words to paper provides any iron-clad guarantee. Too much history, some of it Russian, tells us otherwise. Instead, the answer lies in the incentives of public officials that other parts of the constitution establish. Constitutions seek to do more than merely define the various branches of the state with the idea that a bill of rights will protect us against any usurpation of power by these branches. The institutions a constitution establishes controls the aspirations of officials by "setting ambition against ambition." It accomplishes this in part by creating a balance of power among the separate branches of government -- executive, legislative, and judicial. It does this also by not only allowing politicians to serve only with the approval of voters, but also by giving different branches of the government a different relation to the people. Thus, a president is elected directly by all citizens; legislators are elected by smaller constituencies; and the court is selected indirectly by the people through joint legislative-executive action. In this way political leaders confront each other with as great a variety of interests as possible, so that public policy must be passed with some minimal level of consensus. Further, in large or heterogeneous states such as Russia, the United States, and Switzerland, we have as well a federal governmental structure that allows citizens to control as much of their destiny as possible in a part of government closest to them and ensures that local and regional concerns are given full weight at the national governmental level.

All of this structure influences the incentives of political leaders to protect rights. If the system is designed correctly -- if political careers depend on protecting rights or ensuring against bureaucratic infringement of rights -- then those rights are preserved; but if the system is designed otherwise, then those rights are mere words. Civil rights frequently succumbed to political ambition in Latin America not because they were incompletely drafted; but rather because the political system did not function to protect them. And they were sometimes ignored in the United States, especially on racial matters, not because they failed to be well-articulated, but rather because there was no consensual will to pay full heed to them and, correspondingly, because politicians gained little political capital by acting otherwise.

What is evident from this abbreviated answer to our question, then, is that the mechanism whereby rights are protected and the public interest served depends on a complex interaction of all parts of the government, in combination with the people's consensual determination to keep those rights. It follows that, when evaluating some part of a constitution, we must calculate how that part fits into the larger scheme of things. Thus, a debate over the appropriate relationship of the executive to the legislature cannot be resolved without also considering, among other things, the federal construction of the state, the likely character of political parties, and the relationship of each branch of government to voters. Similarly, in ascertaining whether a constitution grants local or regional government sufficient autonomy requires that we evaluate the extent to which the parts of the national government have an incentive to maintain that autonomy, which depends on whether national politicians will be led to care sufficiently about local interests, which depends on whether people prefer to defend regional interests and regional governmental prerogatives against incursions by the national government, which, completing the circle, depends on whether the state as a whole is structured so as to encourage that interest among its citizens.

We must, of course, begin somewhere when learning how the parts of a democratic state fit together -- especially in so heterogeneous a country as Russia with its critical economic problems. Thus, we will turn in our next essay to the matter of federalism and the relationship of the component parts of the country to the federation itself. More specifically, we will turn next to examine the essential purpose of the federal state, the role political parties play in preserving that purpose, and the determinants of that role.

3. Federalism: Ingredient for Stability or Recipe for Dissolution?

Certainly Russia's most pressing political needs are finding a solution to internal ethnic conflicts, developing incentives for her parts to remain within the Russian Federation, and constructing a state that efficiently solves and avoids crises. There are three commonly discussed paths to this end. The first and for some the preferred one, is force applied by a resurrected authoritarian state. But Russians have other goals in addition to living in a stable and prosperous state. They also demand a state that preserves and protects their individual rights and liberties. In addition, we must also understand that any move in the direction of renewed authoritarianism would produce a reaction around the world that will not only damage Russia's attractiveness as an arena for foreign investment but that will also resurrect images of the Cold War. And it is the blind fool who does not appreciate that, regardless of one's sympathies, the West can better afford to engage in that war than can Russia. Hence, before any coercive route is chosen and before Russia once again travels the path favored by fascists of both the right and the left, it is only prudent to explore the remaining two paths -- a centralized democratic state and democratic federalism.

We appreciate that a deteriorating economy has led people to believe that democracy merely exacerbates problems and cannot solve much of anything. We also understand the fear that a democratic federalism in particular which maximizes the political and economic autonomy of the individual, of local governments, and of regional and republic governments is little more than a recipe for the dissolution of the Russian state. Thus, there appears to be reasonable arguments for preferring if not an authoritarian state, a state that is a limited democratic one that places power predominantly in the hands of a national government, and that, while giving local authorities some autonomy, negotiates the preponderance of regional and local prerogatives on a case-by-case (treaty) basis.

But these arguments are incomplete because a true democratic federalism has not yet been explored in Russia and because current proposals for the construction of a federal state fall far short of an optimal design. Democracy is something other than occasional voting for national officials. And an efficient and stable federalism must be something other than the geographical division of the country into distinct governmental units that operate with some "top-down" line of authority, augmented by bilaterally negotiated agreements between a central authority and regional governments. Those who would seek to direct Russia's destiny must unlearn the instinct to centralize and nationalize. Russia's brains and genius are not contained in the heads and hearts of a handful of political elites. They exist everywhere and in abundant supply and it should not be the case that her people must first find access to the corridors of power in Moscow before they can make their contribution.

Of course, the option of a true federalism should be preferred to other alternatives only if it can be described in terms of specifics that promise a reasonable chance of success. And although nothing in this domain comes with a guarantee, if there is any hope that it might yield a solution (or at least reduce the need for force), it ought to be explored before dangerous demagogues are given the stage. This essay, then, seeks to identify these specifics.

We should state at the outset, though, that federalism can be understood only if we divide our discussion into two parts -- the formal, constitutional structure of the federal state and the "informal" extra-constitutional structures (especially political parties) that arise to organize and direct political action in such a state. This essay focuses on constitutional structures; our next will examine the role of political parties and the special part they play in ensuring a political system's stability. Only by thus dividing our subject can we hope to convince the reader that it is possible to craft a democratic federalism in which Russia's parts would seek unity out of self-interest and in which individual rights would be guaranteed as a matter of course.

Turning, then, to constitutional matters, let us evaluate the assumption that the fragility of the Russian Federation derives from her current economic problems. With a national economy in free-fall, with government deficits funded by fast-running printing presses churning out ever larger

denominations of rubles, each part of society, each region, republic, and district seeks to capture control of the resources and industry within its territory. Such are the explanations for the USSR's dissolution and for the problems the CIS encounters with becoming a meaningful entity. Adding to the danger, the argument continues, are privatization schemes that threaten massive redistribution so that each part of society competes against all other parts to retain control of what it has while demanding a share in everything else.

But economics can provide only a partial explanation of the centripetal forces operating today. The depression of the 1930's impacted everyone yet only a few states experienced revolutionary political change. And the forces operating today against the stability of, say, Canada cannot be described as the consequences of severe economic dislocation -- Russians would love to have Canada's economic "problems." This is not to say that economic prosperity would not weaken many of the demands for independence and sovereignty or that believable promises of a mutually profitable society would not put a brake on extremist views. But given the interdependence of economies and subsequent consequences, few could argue that the dissolution of the USSR was collectively economically rational. Individual rationality, especially that of national leaders who sought to consolidate their power, overcame any imperative formed by collective rationality calculated purely on the basis of economics.

Thus, short of an unacceptable tyranny, disputes and competition between regional and national governments, as well as among regional governments, are ubiquitous and eternal. No one prefers to be taxed by a distant government, regardless of economic circumstances; everyone prefers unfettered control of whatever it is that they possess or hope to possess; national governments and their officials will always prefer to increase their power; and regional authorities will always resist the supremacy of the national officials while at the same time seeking advantage whenever possible over other regions. The American Civil War did not end the dispute between state and national governments or between north and south -- it merely removed the issue of slavery from the agenda of conflict. Switzerland's federal form has not produced a state in which cantons do not compete against the national government for supremacy. And members of the European Economic Community continue to struggle against the interest of the Community as a whole and against each other.

So if we cannot eliminate conflict, how do we control its effects -- how do we design governments that mute regional conflicts that threaten dissolution? If we view the national government as a referee that coordinates regional governments, moderates competition among them, and does those things that are best centralized (e.g., foreign policy, controlling the money supply, maintaining free trade within its geographic domain), then how, in giving the national government authority to act, do we avoid constructing a thing that either destroys regional autonomy by usurping power for its own ends or that facilitates the actions of a subset of regional governments that seek dominance over others?

The answer to this question leads away from constructing a centralized democracy and leads instead in the direction of a federalism that is unlike the one that currently characterizes Russia. It tells us not to construct a federalism in which certain regions, owing to their ethnic composition, bear a different relation to the national government than do other parts of the country; not to construct a federalism in which various parts of the country are autonomous and yet other parts are mere appendages of the national government; and not to construct a "federalism" in which we maintain the old Soviet command-and-control philosophy of assuming that people in Moscow know best and that only their policies can lead Russia back from the economic abyss.

A particular problem with current form of the Russian Federation, but which is both endemic to a centralized federal government and which renders such a state especially susceptible to instability, is the unequal relations of the different parts of the state to the national government. A federal system that is not symmetric -- a system in which degrees of autonomy vary from one region to another and in which a confusing array of bilateral and multilateral treaties characterize the state's organization -- is simply untenable and can be held together only by force and with authoritarian control. Just as one person's greater relative prosperity creates envy among his neighbors, one region's greater autonomy merely establishes the legitimacy of demands for greater autonomy on the part of other regions. In the asymmetric federalism, regions compete for special favors, for particular dispensations from central control, and for recognition of their "unique circumstances." And it is the escalation of these demands -- demands brought about by the general inequality of condition -- that are the chief threat to the stability of any federal state.

Any asymmetry of autonomy, moreover, must be accompanied by an asymmetry in individual rights. A person living in a region without local control of local policy simply does not have the same rights as a person living in a region with such control. A person living in a place in which public officials are appointed by authorities in Moscow is living in a less democratically free state than is a person living in a region that elects its own officials and chooses its own forms of local governance. And as with regions, so it is with people -- envy and the competition for autonomy and rights are the logical consequence of inequality.

This envy and competition, which can arise from accidental historical processes as well as from conscious design, is especially destabilizing in the centralized democratic state, since the only source of reform lies at the locus of political power -- the national government. But this process merely requires that that national government be involved continuously in the allocation of differential benefits across its sub-parts, with the inevitable result that some sub-parts will seek to win control of the national government and use its power for their own ends. In the decentralized and symmetric democratic federalism, on the other hand, no such concentration of power exists and, therefore, there is not authority that can exacerbate whatever inequalities might accidentally arise.

So the **first rule** in constructing a stable democratic state requires that we firmly adhere to the principle of equality among that state's constituent parts. No republic, oblast, or kray should have any more or less autonomy than any other part. No region should be singled out as having characteristics that justify making its residents any less or more democratically free than people elsewhere.

A **second rule** is partially implied by our arguments for the first -- specifically, in constructing a democratic federalism, the autonomy of all republics, oblasts, and krays should be maximized so that we reserve for the national government only those functions that it alone can perform (for example, maintenance of a national defense, maintenance of a stable currency, guaranteeing the free flow of goods, services and people across the different parts of the republic, and the establishment of a court system that provides for equal treatment before the law for all citizens).

This second rule is supported by two arguments. The first is the simple empirical fact that people learn to be democratic, to value the rights of others, and to organize to press their political demands upon the state by first learning how to organize and participate in local and regional politics. People will pay only slight attention to those things they cannot directly influence and that influence them only indirectly. And they will be most cynical about and hostile to those things that seem beyond their ability to influence. Local and regional matters should be otherwise; indeed, local and regional politics should be the great classroom of democratic ideas and values.

Democratic values are not learned by the exhortations of political and intellectual elites to the people to be democratic. They are learned by the practical experience that participation in local and regional politics provides. But this classroom cannot exist if local and regional governments have little control over those things that affect them and that do not affect other regions. It cannot exist if Moscow insists on appointing regional governors; it cannot exist if Moscow insists on directing the design of local and regional governments (aside from ensuring that they are democratic); it cannot exist if Moscow insists on deciding everything from speed limits on local streets, to the textbooks that will be used in local schools, to the methods whereby local and regional officials are elected to office. These are the things that must be decided by people who are perfectly capable of making their own judgements about the things that most concern them.

The other supporting our second rule is that local conflicts which arise within a political sub-unit are less likely disrupt national politics in a decentralized system than in a centralized one. All conflicts in the centralized state must be resolved by central authorities because only they, by definition, have the power to act. A decentralized federalism, in contrast, allows people to search first for local solutions, if only because doing so maintains their autonomy. Only when mutually satisfactory compromises cannot be achieved will the national government be called into the conflict

to umpire a resolution. And the fewer conflicts that are moved up to the national level, the fewer conflicts there are to threaten the state's ultimate stability.

This last argument leads to a **third rule** that supports a decentralized federalism over a centralized one. As succinctly stated by Thomas Jefferson, "the government that governs best is the government that governs least." This rule is not a call for anarchy; instead, it merely seeks to recognize the simple principle of social organization that the most efficient form of government is one that seeks to devolve as much power and authority as possible to lower levels of government. National governments that try to "do it all" not only undermine the educational function of regional and local governments, but they necessarily introduce inefficiencies into the operation of the state. In accordance with processes that Russia knows well, the dead hand of bureaucratic centralization leads to bureaucratic insensitivities to local and regional needs. This dead hand stifles innovation and experimentation with different policies and the discovery of better policies. And this dead hand eliminates any incentives on the part of local and regional authorities to take responsibility for their actions, thereby undermining the relationship between citizens and their government.

Of course, what we have said thus far may seem like mere utopianism, if only because we have not responded to the rhetorical question: What keeps a decentralized federalism decentralized yet whole? What keeps the national government in a decentralized federalism from eventually usurping power? What keeps regional governments from coalescing against each other? And what ensures that we are not merely encouraging the ultimate dissolution of the state by deliberate decentralization? The responses to these questions requires that we consider things other than mere constitutional guarantees and structures. We must also look at the form and operation of those organizations that people establish to influence political outcomes -- political parties. The role of parties in a federal state, then, becomes the subject of our next essay.

4. Political Parties: A Source of Faction or Agents of Political Stability?

In our last essay we argued that Russia requires not only a decentralized federalism that grants as much autonomy to its sub-parts as possible, but also a symmetric one that treats all of those parts equally. However, we ended that essay with a series of unanswered questions that left our argument incomplete. Specifically, we asked: What keeps a decentralized federalism decentralized and yet whole? What keeps the national government in a decentralized federalism from eventually usurping power? What keeps regional governments from coalescing against each other? And what ensures that we are not merely encouraging the ultimate dissolution of the state by deliberate decentralization? Until and unless we can answer these questions we remain vulnerable to the argument that a true federalism is little more than a recipe for Russia's ultimate demise.

The particular problem with constructing a true federal state is that the constitutional restrictions that we might place on the national government in defining and limiting its authority are, as much as any other type of constitutional prohibition, subject to reinterpretation and manipulation as a consequence of the political forces that constitution creates. Granting regional governments control over some resource, for example, does not stop the national government from seeking to circumvent the restrictions placed on it by taxing any gains from the efficient use of those resources or from otherwise indirectly exerting control through regulation.

Guarding against such possibilities with additional guarantees merely makes a constitution unwieldy and unenforceable. But perhaps even more problematical in Russia's case is the fact that negotiating the precise terms of autonomy -- deciding within the context of a constitution which matters fall under the jurisdiction of the national government and which belong to regional or district governments -- will be a protracted and contentious process that will itself exacerbate the forces for dissolution. As the conflict between Quebec and the rest of Canada illustrates, such negotiations can set region against region as each claims special privilege or fears that such privilege will be given to others. And as the domestic processes of all federalisms show, the process of negotiating the terms of autonomy are continuous and unending, and, therefore, such negotiations remain a constant potential source of political instability.

We hasten to add that these concerns are not, of themselves, arguments against seeking a constitutionally constructed decentralized federalism. After all, this approach is credited with being Switzerland's source of stability in the face of well-defined linguistic cleavages. But Switzerland does not have Russia's global interests and it has sustained itself through much of its history by the fact of being surrounded by far more powerful adversaries. Russia has global interests, it is the home of innumerable numbers of small yet important ethnic groups and nationalities, and the assumption of the eternal existence of powerful enemies is a weak basis on which to plan for domestic stability (although a convenient basis on which the demagogue rests his inflammatory demands to lead). Moreover, abiding by the Swiss design cannot resolve Russia's special problem of having to find a way to negotiate the multiple and varied demands of autonomy without the act of negotiation itself inciting crisis.

So even if we accept the idea that meaningful grants of regional autonomy are an essential part of a stable democratic state, we should ask whether there are ways to negotiate these grants without threatening dissolution and whether they can be designed to resist the constant forces acting to undermine any explicit plan of decentralization and fairness.

At this point we must resist the temptation to appeal to purely constitutional structures for any guarantee that the system we design will remain in place. We cannot keep trying to elaborate guarantees of regional autonomy, for example, because doing so merely avoids the problem of

determining how the last added clause, prohibition, or requirement is to be enforced. At some point, the terms of federation set forth in a constitution must be self-enforcing, and this fact tells us that we must look to those extra-constitutional processes and entities that, although perhaps created by a constitution's construction, either act to undermine or to reenforce that document.

Of all the extra-constitutional things that emerge in a democracy perhaps none is more important than the political party. Until we describe and understand the role of parties in whatever system we set in place, we cannot predict how that system will ultimately function and whether it will in fact yield a stable political system. Political parties in a democracy are not, as they are currently in Russia, personal factions or social clubs designed to express one ideological position or another as loudly as possible. Parties in a democracy are the organizations politicians use to get elected -- the things they use to mobilize voters, to communicate their issue positions, to raise campaign funds, and to organize legislative coalitions. But just as politicians and political structure influence the form and role of parties in a democracy, parties influence the actions of politicians. Either directly or indirectly, they influence the incentives of political candidates to negotiate compromises before they run under the same party label, they determine which issues become salient in a national election campaign and which ones remain isolated at the local level. And their structure, determined by electoral laws and the other institutional components of a political system, help determine the extent to which these electoral laws in fact give voters the opportunity to control their elected representatives.

To see what we mean by all of this and to see how parties contribute to a political system's stability, it is useful to see what lessons the American example might provide. Some people might object to the relevance of America, given its different traditions and economic circumstances, and given its absence of territorial ethnic groups. However, America is not only today a stable federalism, it is also one that experienced Civil War in the last century, and the sources of its stability and instability are instructive. In particular, America offers some important lessons about how some constitutional provisions in addition to those we discussed in our earlier essay facilitate political stability, but that, unless we look at the structure of America's political parties, might otherwise go largely unappreciated.

The central point of our argument is that we can trace the stability of America's federal system to the structure of its two major parties, the form of which derives from the influence of four important elements of its constitution. The first element is the requirement that national legislators -- members of the House of Representatives and the Senate -- be residents of their constituencies. The second is the flexibility it gives to state governments (which have the right to design republican governments to their own liking) to prescribe the manner of election of national representatives (subject to the condition that those procedures be "democratic"). The third element concerns what

in not in the constitution -- namely, any device (such as the authority to dissolve the legislature) that allows the president to control legislative parties or even the party he nominally heads. The final element is the manner in which the president is elected, which requires broad based national support that transcends regional appeals.

These four things take us a long way in explaining the most evident feature of America's national parties, namely that they are highly decentralized creatures, that are organized at the state and local level and that compete with seemingly obscure non-ideological platforms. America does not have two **national** parties -- it has fifty Republican and fifty Democratic **state** parties that act every four years to nominate and elect a president but that function continuously to compete at the state and local level. Hence, national legislators are elected according to rules set by their states (including the geographic definition of their districts) and as part of campaign run by state party organizations. Consequently, these legislators, even if they seek national office or otherwise aspire to national and international visibility, cannot ignore local needs. And with a president who can influence their electoral destinies only slightly, that office provides only the weakest incentive to form strong national party organizations (even Roosevelt's unsuccessful attempts to influence congressional elections are legendary). These facts mean then that the national legislature remains protective of local and regional concerns.

But these facts do not explain why legislative coalitions do not form on the basis of purely regional concerns. This possibility is guarded against by the importance otherwise of the presidency so that the rewards of securing it provide the incentive for state parties to coalesce across states. That only two such coalitions form (as opposed to many in the parliamentary systems of Europe) follows from the constitutionally mandated laws under which presidential elections are conducted and from the fact that the American president is anything but a weak public figure. Without examining details, the "winner-take-all" character of those laws and the limited opportunities they provide for minor parties (even those that receive 20% of the vote as in Ross Perot's case) to block the selection of a winner compels politicians to coalesce into two blocks -- Democrat and Republican. And insofar as regional coalitions are concerned, those laws also make it difficult for a party to succeed if its support is geographically restricted. Thus, in a wholly automatic way, parties seeking to win the presidency must be national.

Local concerns, though, remain predominant within parties, so both parties are compelled by the forces of competition to negotiate their internal geographic contradictions before they disrupt national politics. Indeed, the single instance in which geographic conflict was negotiated semi-constitutionally outside of party structures resulted in civil war. The American Civil War occurred when politicians short-circuited the natural process of intra-party compromise and upset a delicate constitutional balance of powers by artificially maintaining a Senatorial representation of southern slave states equal

to that of the north. Because this arrangement could not be sustained on both moral and practical grounds (the practical matter being the predominance of northern industrial development), it led to a split of one of the national parties and, subsequently, to a war between north and south.

Thus, the primary guarantor of American federalism against regional conflict and of the autonomy of state governments is not prosperity (which may be more the consequence of stability as its cause) or explicit constitutional provisions of autonomy (although they obviously cannot hurt if consensually agreed to). Instead, it is a consequence of a delicate constitutional balance formed by a complex combination provisions that decentralize party structures and yet at the same time compel them to negotiate their internal contradictions.

These devices may have been arrived at as much by accident as by planning (the framers of the American constitution failed to appreciate fully the role parties would play in their future). And we certainly have not attempted to dissuade anyone yet from thinking that the Russia's internal conflicts are more divisive still than those that confronted America in the 1850's. But the operation of these devices provides important general lessons for those who would design a new Russia federalism. We must appreciate that political parties can unify as well as divide and that constitutional structures ought to be designed with this fact in mind. We should not look to any single clause or provision to accomplish our goal of stability -- party structures and roles are determined by the interplay of many constitutional devices. Looking at a single relationship such the relative powers of president versus legislature will lead to unanticipated consequences. As with any self-controlling mechanism, we should pay special attention to how the influence of each element of a federalism interacts with and is influenced by all of the other political parts of the nation.

Of course, there are many things that distinguish America from Russia that must be taken into account when attempting to apply these lessons. Most important is the fundamental difference in the composition of ethnic group demands in Russia and America. Owing to the structure of its economy, its history, and such matters as housing shortages, there is considerably less geographic mobility within Russia and a good deal more territorial conflict. Combined with an economic deterioration that precludes an explicit or implicit process of "buying off" these demand, circumstances in Russia often seem to make compromise seem unrealizable. It is this issue to which we will turn in our next essay.

A second potential difference, depending on the final resolution of the conflict between the People's Congress and President Yeltsin, concerns Russia's choice of a strong parliamentary or strong presidential system. Much of what we have said about America would not hold were it not the case that her regional parties have a strong incentive to coalesce in order to win the presidency. Without this incentive, we could expect to see a great many regional parties forming and surviving, leaving inter-regional compromises being formed, if they can be formed at all, wholly within the legislature. This fact alone means that the issue of a strong versus a weak presidency for Russia cannot be

divorced from plans to ensure that Russia's federal structure remains in place and that inter-ethnic compromise be encouraged. Until and unless proponents of a governmental form that emphasizes the power of parliament over that of a president can tell us how their federal structure will survive, we should remain prejudiced toward the establishment of a strong president -- at least a president capable of vetoing legislation and who can direct the operation of the executive branch of government -- including the selection and dismissal of cabinet personnel -- without undue interference from the legislature. Put simply, no document can be approved as a constitution for Russia until we understand fully how it inhibits or prohibits a stable federalism.

5. Parliamentary versus Presidential Government in an Ethnically Divided State

In our last essay we argued that a political system with a few (two or three) parties that have regionally decentralized structures can greatly facilitate political compromise and mute conflicts between and among national and regional governments. However, that argument was based on the American experience, which many people believe is irrelevant to Russia. Aside from differences in history and current circumstances, Russia, unlike America, has any number of contentious territorial ethnic groups, some of which profess to prefer autonomy or independence and others with territorial claims on yet other minorities within the Federation. Such conflicts, especially when reenforced by religious or linguistic cleavages, have an emotional component that can preclude any resolution, short of the application of coercion by a central authority. At the a minimum, then, we should consider as broad a range of democratic options as possible in looking for ways to minimize the impact of these conflicts.

We begin by noting that although all draft constitutions prepared for Russia provide for a president in some form, Moscow's rancorous political debates offer proposals that drag things in the direction of parliamentary government and proposals that point in the direction of the American model. The first thing -- which is championed Yeltsin's opponents, which is the logical outgrowth of Soviet constitutions, and which is part of the draft document prepared by the Constitutional Commission headed by Oleg Rumyantsev (and included as well as the version prepared by Anatoli Sobchak) -- allows Congress to control the Council of Ministers through its power to dismiss the Council. Yeltsin's supporters, on the other hand, demand that the president have the right to dissolve Congress and call for new elections. Adding this power to current constitutional drafts yields a mixed system that parallels France's presidential-parliamentary structure. A third possibility emerges if drop both proposals from the constitution, in which case we arrive at a system in the American presidential mold.

The debate over these alternatives occurs largely in the context of the power struggle between Yeltsin and the Congress. But the choice of governmental form should be divorced from such power

struggles and should focus instead on the issue of the ultimate stability of the Russian state. Looking first, then, at parliamentary systems, the key feature of such systems is that they provide for a unitary government in which the chief executive (prime minister) and his cabinet serve at the discretion of the legislature -- or, more precisely, at the discretion of a majority in the legislature. As long as the government can ensure a majority in the legislature, it performs its executive functions, including leadership in the formulation and execution of the law. But if a legislative majority cannot be sustained, the government resigns or the prime minister calls for new elections. Although a number of variations can be found around the world, a president plays a minor role in parliamentary government so that executive-legislative conflict is minimized by making the executive a part of the legislature.

By thus avoiding such conflict, the argument goes, Russia can better pursue a rational policy of economic and social reform. However, parliamentary systems have their drawbacks. The first, which arises if the party system is highly fractionalized, is that legislative coalitions and thus, the government itself, may be unstable. This instability, which is especially prevalent in political systems without established party structures or with structures that allow extremist parties to be pivotal in the formation of governing coalitions, can be as threatening to rational economic planning as executive-legislative deadlock. The second danger is the tyranny that simple majority rule in a legislature allows. Such tyranny may take a mild form in a state with major parties that do not differ much on issues or in states without deep conflicts. But it can be quite real in states in which minorities are systematically excluded from governmental coalitions owing to their small size or extremist views.

The efficiency and stability of parliamentary systems, then, depends on the character of the political parties that emerge to compete for parliamentary seats. And that character, in turn, depends on the extent to which we try to satisfy another demand that commonly arises in ethnically divided societies -- the demand for proportional legislative representation (PR). Fearing that they will be under-represented if simple majority rule procedures are used to elect legislators (especially if they fear that legislative districts can be drawn to render them minorities in all districts), and realizing that legislative representation in some form is the only way to influence a government, minorities will demand some guarantee of representation. PR is the usual route to that end.

Interestingly, the Rumyantsev draft appears to encourage or at least leaves the door open to PR to the extent that it requires only that, in a direct vote, "The State Duma consists of 450 deputies elected ... by territorial constituency proportionate to the size of the electorate therein" [Article 84, section 2] (the Sobchak draft is more elliptical and it is difficult to see precisely what mode of representation is intended). Such a clause seems to encourage PR since the most common way to achieve PR is to hold elections in large districts of varied size, depending on population, that simultaneously elect as many as twenty representatives (or, as in Israel and Holland, the whole

legislature in one national district). Parties submit lists of candidates, voters vote for the party they prefer, and the parties are allocated seats in the district in proportion to the votes they receive there. Because securing a majority or a plurality is no longer required to win a parliamentary seat, various parties emerge to represent the specific ideological, ethnic, social, or religious cleavages that characterize society, where the actual number of parties depends on the number and salience of pre-existing cleavages and other details of electoral procedures (such as the actual size of districts, minimum vote requirements, and alternative ways of tabulating votes).

PR, then, seems an attractive addition to parliamentary government since it gives groups within society the opportunity for explicit representation. But PR has its disadvantages. First, it increases the incentives of politicians to engineer the creation of cleavages or to increase the salience of preexisting ones, as when someone engineers conflict in order to use it as a basis for forming and leading a new parliamentary party. Put simply, PR gives extremists an audience and a potential role in the formation of a government. Moreover, although forming a government creates some incentive for compromise, these incentives are greatly reduced to the extent that electoral rules fail to discourage the formation of parties, since parties will then strive to differentiate themselves from each other in order to maintain their electoral support. Little compromise occurs within party structures since a party without a clear focus will soon find itself prey to those competitive parties – both moderate and extreme -- that provide such a focus.

Admittedly, these problems need not be consequential in a homogeneous society. But a pure parliamentary system that employs PR seems wholly inappropriate for Russia since Russia requires less not more fragmentation in parties and less not more reasons for increasing the salience of ethnic disputes. More problematical still is the fact that none of the current draft constitutions specify how legislative districts will be drawn or who will do the drawing. Hence, there is no reason to suppose that PR will not operate to fragment parties further or will not operate wholly to the benefit of some majority within the legislature.

We turn, then, to the opposite extreme, presidential government, which is characterized by an elected chief of state who heads a government that he appoints (with the "consent of the legislature") and that only he can dismiss. The presumed advantage of this system, of course, is that a popularly elected president provides a country with a focus for its aspirations and its sense of nationhood. It also provides for the election of a person who can lead in times of emergency. Thus, we are not surprised when states strengthen this office (for example, France in the 1950's) if confronted with seemingly intractable problems. Presidential systems also guarantee a greater degree of political stability since, unlike parliamentary systems, the government (president) is elected for a fixed, constitutionally mandated term.

There are, nevertheless, at least two problems commonly associated with this alternative. The first, and the one that parliamentary systems seek to avoid, is the possibility of legislative-executive stalemate, which arises whenever the president's party is different from the one that controls the legislature (to imagine a president who can forever "remain above party and politics" is naive). Hence, choosing between presidential and parliamentary systems can be a choice between an efficient unitary state with the potential for instability versus legislative deadlock but with stability.

The second problem associated with presidential systems is that there does not appear to be any "best" way to elect a president -- all electoral procedures come with both desirable and undesirable features. Minority demands for PR are reduced in presidential systems owing largely to the diminished importance of the legislature. In fact, the more important matter is the method of electing a president since with a strong presidential system, it is this method that determines party structures.

Of course, a direct vote seems the simplest and most "democratic" method. But there are many ways to conduct such a vote (inexplicably, the Rumyantsev draft leaves this matter up to the legislature -- a feature that **must** be corrected). One possibility is to require that a victorious candidate receive a majority of votes and to allow for a runoff election between the two strongest candidates if no one receives a majority on the first ballot. The majority requirement with a runoff seeks to ensure against the election of a candidate who receives only 30% of the vote and who is opposed strongly by a majority. Like PR, though, this system rewards minor parties that form merely to block a first-ballot victory so they can negotiate to throw their support to one candidate or another. Thus, the majority runoff procedure (employed in the Sobchak draft constitution) eliminates one of the great advantages of presidentialism -- namely, the incentive of parties to coalesce and to compete across ethnic categories for the office of president.

The difficulties with a direct vote are compounded by the inexplicable requirement in the "Sobchak constitution" that turnout exceed 50% before an election is deemed valid. One of the great fallacies of democracy is the belief that low turnout is "bad" and high turnout is "good." Voters may abstain because they are dissatisfied and repulsed by all alternatives; on the other hand, they may also abstain because all viable candidates are acceptable. And formal turnout requirement merely sets the stage for extremist parties to call for election boycotts, without requiring that they formulate explicit policy alternatives.

Many of the defects of a direct vote can be corrected if the minimum turnout requirement is deleted and if, instead of a majority, we require that the winning candidate receive some lesser percentage of the vote (say 40%) before mandating a runoff. But before we think that this modification solves all problems, consider the problem of attempting to ensure against the possibility of a "regional president" -- a president who secures most of his electoral support from a specific

(albeit large) geographical region and whose election thereby threatens those regions who failed to provide him with any significant support.

One alternative is to eschew a single president, and, as in Switzerland (and Yugoslavia before its dissolution), to employ a collegial presidency in which a president is selected on a rotating basis from a committee composed of representatives of its larger cantons, or in which the president is the committee itself. As Simon Bolivar argued over a century and a half ago, though, such a system lacks "unity, continuity, and individual responsibility." Nigeria, in its 1979 constitution, took a different approach and required that presidents secure at least 25% of the votes in each of its nineteen states. Czechoslovakia, prior to its dissolution, required that its president secure a majority in both its Czech and Slovak halves. However, such systems can result in contentious bargaining whenever no one meets these requirements. They also create incentives for the formation of regional ethnic parties that seek to block the election of anyone so that they can bargain subsequently for special advantages.

The American model offers a different approach that may be especially relevant to Russia owing to its federal character. Because it awards a state's voting weight (which is determined essentially by its share of the country's population), and because a president must win a majority of "state votes," this system greatly disadvantages candidates who can make only regional appeals. Once a candidate has a plurality in any particular state, increases his vote further there does not increase his likelihood of winning since it cannot increase his "state vote." Thus, a candidate cannot win the presidency merely by securing an overwhelming vote in some special region of the country. We might speculate, in fact, that some of the pressures for Czechoslovakia's dissolution might have dissipated if, instead of a two-district scheme, it had divided itself into a greater number of districts (allowing some of them to be ethnically heterogeneous so as to "train" the parties to compete across ethnic categories rather than wholly within them). The disadvantage of this scheme, though, is that, until a two-party system forms so that one party is assured of securing a plurality in a majority of districts (states), elections are likely to be decided by the legislature, as occurred in the United States on several occasions in the early 19th century.

There are other possibilities, including wholly indirect devices in which voters elect "electors," who select a president. Or, we can combine presidential and parliamentary systems as in France, although this can result in the anachronistic situation in which a strong president must contend with a government controlled by and opposition party. There is, though, no need to explore additional possibilities, since we are in a position to offer some definitive conclusions. First, to reiterate a point made in a previous essay, the character of a political system is determined not by any single factor such as the relative power of the president versus the legislature. It is a function of, among other things, the electoral procedures used to elect legislators and presidents. Second, no system is perfect. The choice between a presidential and a parliamentary system entails a number of choices between

hypothetical consequences -- a unified government versus executive-legislative deadlock or between governmental stability and instability. Third, no electoral system is perfect or offers a guarantee of stability. Proportional representation promises minorities a formal voice; but it can result in a highly fractionalized party structure incapable of achieving compromise on divisive issues. A direct vote for president can do the same thing; and a direct vote need not preclude the possibility of wholly regional candidates. Other mechanisms can avoid these problems, but only by admitting the possibility of indecisive outcomes and the necessity for legislative selection.

Of course, none of these difficulties is an argument for not making any choice. People and political systems will adapt to different constitutions, and it is more important to choose **some** system and some constitution rather than search for a non-existent perfection, if only so that everyone is clear about the rules of legitimate political process and so that the people of Russia can get on with their business.

6. Democratic Institutions: Why Would They Influence Anything?

The theme of our first four essays is that the design of democratic institutions -- of constitutions, electoral laws, forms of legislative representation, and so on -- can greatly influence outcomes, including the stability of the state itself. But why should we believe that institutions will influence anything of consequence? Aren't there fundamental forces and historical inevitabilities that determine the flow of events? Why should we suppose that these institutions will not merely provide legal cover for the few who act to the detriment of the many? And, more specifically, why should we expect that importing institutions that seem alien to Russian political tradition and alien to the social theories of the past seven decades can change the future course of Russian politics in any appreciable way?

These are profoundly important questions because they take us to the root source of democratic stability and to the basis for asserting that democratic process has legitimacy as a preferred form of social organization. Thus, they warrant answers before we proceed further in this series to discussions of alternative institutional forms and democratic processes.

We begin with the fact that every society operates by rules that define admissible and inadmissible, cultured and uncultured, encouraged and discouraged behavior. In primitive societies, these rules often appear as tradition and religious proscription. More modern societies set some of its rules to paper as laws, but most rules remain implicit and are referred to as "social norms." A norm may be a simple thing such as allowing those on a bus to exit before those who wish to enter move; or it may be more complex as when it proscribes whom to give one's seat to on a bus and when to do it. Simple or complex, these norms guide behavior on a day-to-day basis and it is difficult to imagine society without them.

But why do people allow themselves to be bound by norms, especially if, as is usually the case, there are no laws to ensure their enforcement? The short answer to this question is that society, implicitly aware of the order they provide and the benefits that flow from order, achieves a consensus about acceptable patterns of behavior and teaches them to successive generations so that they become "instinctual." At the same time, of course, society remains prepared to sanction those who defect from its norms, and so it must also establish norms that govern the application of these sanctions. For example, shoving one's way onto a bus before all who wish to leave it have done so may ensure a seat, but most persons avoid such behavior because they know what everyone thinks of such acts -- and few persons want even strangers to think poorly of them or prefer to be scolded publicly by someone's grandmother. Norms of acceptable conduct on public transportation are adhered to, then, because it is not in a person's self-interest to act otherwise. And the norm is enforced because those who do so -- the grandmother who scolds -- knows that her actions are effective and socially acceptable.

Conversely, social norms stop serving their purpose when people come to believe that others will not adhere to them, when people fail to impose the requisite sanctions, or when people become confused over which norms are legitimate and which are illegitimate. Society in general and Russia in particular, then, can encounter "a crisis of norms" when it tries to establish new social and economic relations and at the same time disrupts any consensus over acceptable rules of social action. If we are told in one month that private profit is a crime and in the next that it is a social virtue or that the accumulation of private property has been transformed from an act of exploitation to a right, then it may take some time before a new system of social norms emerges to render society coherent and efficient.

Most norms come to us "automatically" and unable to comprehend their source, we relegate their study to anthropologists. But there is another set of norms that are established, if they are established at all, in a different way -- the norms of democracy. These norms, which include such things as honoring the civil liberties and constraints on action provided for in a constitution, arise at least initially through acts of conscious creation. In fact, the most explicit and expansive act of norm-creation is drafting a political constitution that specifies rules of legitimate political action.

In times past, of course, the norms of legitimate political action were generated and enforced by monarchs or dictators. There was no confusion over their content and little reason for most of us to become concerned with their genesis. Our primary concern was in making certain that we did not violate them or in finding ways to maneuver around them. In turn, the security of the ultimate enforcer of these norms -- the monarch or dictator himself -- derived from our common fear and belief that if any person or small group of persons acted otherwise, sanctions would be applied. No matter how well or poorly the dictator or monarch governed, we knew the cost of deviation, including the cost of failing to participate in a sanction we believed unjust. Revolutions, then, occur when a

large enough part of society comes to believe that they will not be punished or, out of ideological or patriotic conviction, that the benefits of defection exceed the likely personal costs.

The transition to a democratic state is also a conscious process, except that unlike the process whereby a dictator asserts his authority, democratic transition entails the establishment of a set of norms that are based on the principles of self-governance, the rule of law, and respect for individual rights. A constitution, in turn, is the central component of this norm-generating process because it defines the institutions of governance -- courts, legislatures, electoral laws, executive offices -- and it defines the relation of these institutions to each other and to the people. These institutions are like norms because they consist of bundles of rules. The description of a legislature; for example; includes the rules whereby its members are elected, the rules that define legitimate and illegitimate political opposition, the rules under which voters vote and political parties operate to fill legislative seats, the rules that dictate legislative deliberations, and the rules that specify how the product of those deliberations (laws) are to be ultimately enforced.

That the construction of a democratic society focuses on the creation of institutions is one of the things that distinguishes it from an earlier experiment. That experiment, the Communist one, was predicated on the assumption that social norms can be changed so that people would equate private and social values. Under the assumption that if people could be "perfected" to pursue purely social values, socially desirable ends would prevail automatically. Consequently, the construction of subsidiary norms of enforcement were ignored. Instead, the leadership of the Party or the dictate of an autocrat would substitute during any transitional period. That idea is now bankrupt, because we know that values and beliefs cannot be divorced from individual self-interest and because as we have learned all too painfully, the autocrat can too easily pervert the institutions he controls.

Democracy operates with a different assumption. To reiterate James Madison's famous premise, "The seeds of faction are sown in the nature of man," so that self-interest will continue to shape people's actions. Hence, rather than trying to perfect people, democracy seeks instead to redirect that self-interest and to develop a consensus about norms of an entirely different type. Specifically, it seeks to develop norms about the legitimacy of procedures, rules, and institutional structures that channels self-interest in socially acceptable ways and in ways that reenforce people's incentives to maintain those institutions.

Thus, when we speak of a country as having a democratic tradition, we do not mean that its citizens are somehow more perfect or pursue different ends than people elsewhere. We mean instead that they hold a consensus over the legitimacy of particular institutions and individual rights, that they expect their fellow citizens to act in accordance with the rules that describe those institutions, and that they have incentives to sanction those who act contrary to these expectations.

If the act of democratic norm-creation is performed well, these norms and their associated institutions direct people's actions in the intended way; if they are designed poorly, then they either fail to influence actions or they influence them in unintended and undesirable ways. But now we come to the central and critical question: What determines whether these norms, these bundles of rules, are designed well or poorly? How do we know that a constitution is complete or incomplete, well- or poorly-crafted, appropriate for a society or inappropriate?

The other essays in this series try to give substance to different parts of the answer to these questions by focusing on specific institutions and processes. However, in providing details, we should not lose sight of the underlying mechanism whereby constitutional rules are enforced.² Democratic institutions and rules that work well are followed and enforced in much the same way as social norms. The politician who contemplates an action that dishonors his position, the legislator seeking to subvert parliamentary procedure, and the potential tyrant desirous of usurping power will be constrained from these actions if they believe that existing political institutions give society the incentive to sanction such actions, if those institutions coordinate society to resist this subversion so that their self-interest is to act otherwise.

The great trick to constructing stable democratic institutions, then, is this: Rules (or the bundles of rules we call institutions) that are consistent with the normative values we commonly associate with democratic practice -- the values specified, for instance, in a bill of rights -- must be constructed so that it is in everyone's interest to abide by them, so that it is in society's interest to punish defectors (as when voters act to defeat an incumbent politician), so that we do not create incentives for subsequent detrimental changes in institutional structure, and so that the outcomes that eventually emerge are deemed as beneficial as those that any other feasible configuration of institutions can generate.

Satisfying this requirement imposes restrictions on feasible institutions and workable rules. First, democratic rules must be understandable to most people and should allow for as little ambiguity as possible. They should be generally understandable because they are social norms and norms that cannot be easily understood cannot serve their function; they should be unambiguous because the self-interest of politicians will lead them in the direction of trying to take advantage of any ambiguity. A rule such as "the legislature will pass no law infringing on the freedom of the press" may seem too restrictive and in want of qualification (to avoid, for example, the possibility that the press will publish material damaging to national security). But if the courts that interpret and enforce this rule are themselves constituted correctly, if there is a social consensus as to acceptable qualifications of press freedom, and if society's other political institutions are well-crafted (if, for example, the legislature that appoint judges is responsive to society), then the exceptions the courts allow will be acceptable.

Second, those rules should be consistent. Just as we cannot have two social norms that contradict each other lest one or the other becomes unenforceable, we cannot have constitutional rules that do the same. Contradictory rules arise, for example, when we give both a legislature and a president the constitutional right to promulgate laws of the same type or when we give two government agencies jurisdiction over the same policy. A draft constitution, then, should be examined as an exercise in logic or in much the same way as the mathematician checks the proof of a new theorem -- by examining the proof for completeness and logical consistency.

Third, and as part of the preceding evaluation, the consequences of constitutional rules should, as much as is humanly possible, be mapped out in order to avoid the possibility of unintended consequences. This "mapping out" includes assessing how different rules interact to reinforce or to negate each other -- describing, for instance, the potential areas of legislative-executive conflict. It also includes evaluating the private motives that a particular set of rules will engender. Will lead legislators to be concerned primarily with the interests of the constituency they ostensibly represent and how might such a concern conflict with the private interests of members of the executive branch? What electoral laws encourage the fragmentation or consolidation of political parties, and what policy positions will parties advocate if they are fragmented; if they are consolidated?

Fourth, institutions should be in equilibrium. It matters little, for example, if we give a president powers over a legislature that we deem essential (such as the right to veto legislation) if, at the same time, the legislature can subvert the very essence of institutional constraints because we allow it to wholly control the relationship of the president to the people via control over the president's method of election (as the current Romyantsev draft constitution does). Similarly, legislative institutions cannot be in equilibrium if we assert that legislators should be responsible to the electorate but at the same time we allow legislators to define for themselves the rules under which they must seek reelection. We should assume that legislators will pursue their self-interest of seeking to remain in office; and without offsetting structures, the entire constitutional structure will soon lose meaning.

Finally, we select particular institutions because we believe that individually and in combination with each other, they will yield outcomes or processes of a particular type. We choose a federal government because it protects local autonomy, a president because we believe that the state requires focused leadership, direct election of the president because we believe this method is just and because we want to encourage a particular party structure, single-member legislative constituencies because we believe that that is the best way to protect the federalism that other parts of the constitution define, and so on. But most importantly, we choose specific combinations of institutions because we want outcomes that everyone will perceive as being in their self-interest. We do this because we understand that the institutions of the state are merely the agents of the people and that if they fail

to serve their purpose, then it is the people's right to demand different rules of social-political organization.

7. Citizens in a Democracy: Must We Be Something Other Than What We Are?

It is common throughout the world's democracies for people to be told that they have special responsibilities they must meet in order to maintain their form of government -- they should be informed of public policy, they should participate in democratic processes, they should adopt special attitudes about the civil rights of others, and so on. But these admonitions are reminiscent of the ones articulated by a regime that sought to forge a Communist utopia by breeding a new social consciousness. Thus, they seem at odds with the argument that democracy proceeds under the assumption that people cannot be perfected and that the design of democratic institutions presumes that the pursuit of a sometimes narrow self-interest is a constant in human society.

This apparent inconsistency demands resolution, especially in Russia. First, we do not want to endanger Russia's transition to democracy by fostering the incorrect and dangerous belief that any radical transformation of the human psyche is an essential component of that transition. Second, we want to confront the oft-repeated assertion that democratic principles are alien to the Russia character, that Russia's political traditions preclude the possibility that its people can manage a democracy, and that only the strong leader can direct the destiny of this diverse and sometimes anarchic society. Thus, we ask: Are there qualities that citizens of stable democracies possess that Russians do not? Is there any inherent reason for supposing that democracy cannot take root in Russia owing to the "special character" of her people?

Our answer to such questions is NO. However, our answer is not predicated on the supposition that Russian's do not possess a unique character, traditions, or culture (as well as a history of authoritarian rule). We predicate it instead on the argument that democracy does not demand that we be much different from what we are.

This is not to say that the smooth operation of democracy does not require that we think a bit differently about rights and liberties and about the rule of law. Certainly it requires the gradual development of different expectations about the role of the state and about our relationship to it. We must believe that it is legitimate to oppose those who would tread on our rights, and certainly democracy works poorly when we do not respect the right of others. But, as we hope to show, whatever differences are required are but slight adjustments in how any modern society functions, and they come naturally if our political institutions are designed correctly.

To illustrate, consider the admonition that the citizens of a democracy should keep themselves informed of politics and of the actions of those who claim to represent them in national, regional, or

local legislatures. After all, ignorance, we are told, is the lever used most commonly by those who would subvert our freedoms.

The simple fact, though, is that most of us have more immediate concerns than paying close attention to the political waltz of politicians in Moscow and elsewhere -- concerns that include feeding our families, securing our personal safety, maintaining our friendships, furnishing our apartments, teaching our children, and earning a living. Moreover, being fully informed about politics is not only time consuming, but it also can appear fruitless. It is fruitless (even dangerous) in a dictatorship. But things do not always seem much better in a democracy. After all, few in a democracy can greatly effect political outcomes directly, if we can effect them at all. In voting for president or even for a local representative, the likelihood that our vote will be critical to the final outcome is infinitesimal. Thus, in deciding how to invest our time, we are much more likely to invest it in those things we can control than in the distant matters of political process.

What we have just said applies to people everywhere. Few Americans know the name of their representatives, few Frenchmen know the organization of the European Economic Committee, few Costa Ricans know the impact of their government's trade policies, and few Indians know the political composition of their Congress. Indeed, politics there seems little different than a sports event: People may cheer passionately for one team or another, but they know that there is little they can do to influence the outcome. Or, to put matters differently, if given a choice between investing in learning about the details of government policy versus learning about, say, how to repair the plumbing of a broken sink, it is far better to invest in plumbing.

Nevertheless, democracies function and we must ask: How can great masses of people, preoccupied with things other than self-governance, self-govern?

The answer to this question lies in the extra-constitutional institutions and organizations that arise in a democratic society -- political parties, agricultural collectives, local political clubs, professional organizations, workers groups, and the like. Democracy is something more than a great mass of citizen-voters and constitutionally proscribed institutions led by a handful of political elites. It consists also of a large number of subsidiary structures that arise to connect people to their government. These structures organize, lead, and inform. They teach us essential facts, they guide our vote, and they provide the means whereby people can peacefully organize to protest against policies they deem unwise or opposed to their self-interest.

Such structures do not arise in a democracy because people there are somehow different from those elsewhere. There is nothing in the water or air that gives Americans, Taiwanese, Frenchmen, Indians, Germans, or Costa Ricans any special advantage that makes them more able than Russians at creating these organizations. Russians are not perennially disadvantaged merely because eighty

years ago a Czar prohibited meaningful political action or because such action was dangerous when the country was a despotism.

The organizations that fill the gap between citizen-voters and constitutional institutions arise in part because those institutions can be influenced by concerted collective action. Because worker collectives, neighborhood committees, and social clubs can mobilize voters for and against political candidates, citizens can act through them to influence political outcomes. And when offered a menu of organizations in which to participate, people learn which serve their interests and which advocate contrary positions. Indeed, it is often unnecessary for most people to even participate actively in such things -- they can merely observe who it is that these organizations support and oppose. In this way, rather than becoming informed directly about candidates and their policies, people can take learn from the actions of others.

For example, if a person is concerned about environmental policy and if there is a full range of interest groups seeking to influence such policy -- some favoring those who are indifferent to ecological matters, some favoring consumers, and some advocating extremist positions -- then we can monitor the candidates these groups support. In this way, these groups save us from the necessity of becoming fully informed about the details of policy or the sincerity of each candidate's utterances.

We would not argue that this is a perfect process or that, from time to time, people are not misled. But if the marketplace for political ideas is allowed to operate, then experience has taught us that people will learn about their self-interest and learn who holds an equivalent interest.

An poignant example is America's Association for Retired People (AARP). The AARP, which monitors public retirement and medical care programs and informs its members about the positions of politicians on these issues, is almost certainly the most powerful interest group in the United States. The elderly not only care greatly about such issues, but they also stand ready to support or oppose political candidate with their votes. Thus, with millions of members (anyone above the age of 55 can join for a modest annual fee), the politician who earns the ire of this association does so at his or her peril. In summary, then, the AARP monitors the information of all relevant politicians and holds a reputation of providing accurate information; the elderly rely for their information about politicians on the AARP's publications; and, completing the circle, politicians are loth to advocate or to vote for policies that are not in the interest of the elderly, because they know that their actions are being watching.

Of course, it may seem unexceptional that an entities like the AARP arise in "mature democracies" with traditions of citizen political organization and participation. What we must explain is why we anticipate the emergence of such things in countries recently making the transition to democracy. After all, we cannot yet exclude the possibility that political leaders will seek to exert authoritarian control over this marketplace of political ideas when it is in their interest to do so. That is, we cannot

assume that those in power will not try whenever possible to preclude the existence of those things and activities that might threaten their position.

There are in fact two protections in a democracy against such a possibility, each of which depends on the other for its success and neither of which imposes special requirements on culture, or tradition. The first condition is self-evident -- a free and unfettered press. However democratic a political system might appear, if the state controls the activities of the press, then history teaches us an unambiguous lesson: Those in positions of authority within a government are incapable of resisting the temptation to have the media operate for their benefit. And if the media operate primarily for the benefit of those in power, then we are soon deprived of the right and the ability to organize, to uncover, and to oppose the deceptions that political elites will attempt.

In recognition of this fact, it is essential that constitutions contain only an unambiguous and unqualified guarantee of press freedom, so as to constrain the state to the greatest extent possible. But we require an additional guarantee, which is provided by a second protection -- competitive elections. If democracy has one essential characteristic, it is the opportunity it gives us to replace one set of leaders with another. The thing that distinguishes democracy from other forms of government is its basic premise that the ultimate sovereign is the people and that their ultimate right of sovereignty is the right to choose their political leaders. Hence, without competitive elections, nothing else matters.

The difficulty here, however, is that if competitive elections require a free press and if the free press require competitive elections, what guarantees that both protections will sustain themselves simultaneously? Fortunately, it is within the cauldron of such elections that many if not most of the organizations arise that allow citizens to become informed and to mobilize politically, including even a free press. Organizations do not arise like mushrooms in a forrest merely because citizens seek to influence politicians. They arise and are sustained out of the self-interest of politicians. They arise in large part because one set of politicians seeks to defeat some other set, and because politicians have an incentive to engineer and support the organizations they think will support them.

Returning to the example of the AARP, it might seem that most politicians would find the existence of such an organization discomforting. After all, who appreciates having someone looking over one's shoulder at all times, waiting to broadcast mistakes to anyone who will listen. But politicians can just as easily welcome such things, since political action groups are often the vehicle they use to dislodge an incumbent from office or for retaining that office once it is secured. There is, in fact, a considerable number of state and national legislators in the United States who owe their positions to organizations like the AARP.

Thus, citizen-organizations serve a dual purpose -- they, in collaboration with the mass media, facilitate the flow of information and, at the same time, they assist politicians in their careers. Out

of this symbiotic relationship and within the context of competitive of elections comes the protection of the right to organize, the right to possess information about political leaders, and the right to disseminate that information. And in this way, the citizens of a democracy do not rely for the preservation of their liberties on the existence of honorable, fair, democratic or just political leaders – they rely instead on the self interest of those public officials who, if processes operate as planned, will act honorably, fairly, and so on even if their nature would otherwise lead them to act differently.

Citizens in a democracy, then, do not rely on the development of any special character wholly divorced from their culture to support their institutions. As with politicians, they rely on their own notions of self-interest and the self-interest of others. French, Germans, Spaniards, and Austrians do not abandon their identities merely because they live in democracies. New values may be added to old ones, but the form of the organizations that service democratic process can take many forms, where those forms are influenced not only by formal constitutional structures, but also by the values and the different modes of social action that are most compatible with each society's enduring structure.

In a society of immigrants such as America, organizations centered around national identities may play an especially important role as people seek to maintain their cultural heritages. In Russia, other organizations centered around the farm or work collective can serve the same political purposes. The public policies that evolve in Sweden are not the same as those that develop in Australia; the formalities of debate and the rules of procedure are not the same in the Britain's parliament as they are Taiwan's legislative yuan; and the form and functions of the judiciary in France can be quite dissimilar from those that exist in neighboring Spain.

It remains true, of course, that as Russia's democracy matures, people will learn to hold different attitudes toward their government and toward each other. Beliefs and expectations will change as we grow accustomed to self-government. But those beliefs and expectations are not required to be wholly in conflict with those social norms and values that Russian's believe lie at the core of their culture. It also remains true that the right to vote, the right to organize, and the freedom of the press remain, in any democracy, in a delicate balance and we must learn to recognize things that threaten this equilibrium. Nevertheless, it is worth keeping in mind that one difference between democracy and communism was communism's supposition that it could change Russian traditions and values as well as human nature; democracy requires no such assumption.

8. The People's Congress: Can They Govern Us If They Cannot Govern Themselves?

Legislators scream epithets, someone pushes someone else, and soon a group charges the lectern, reaching, grabbing, and punching. Sounds like the People's Congress? Perhaps. But this scene could just as easily describe Japan's Diet or Taiwan's Yuan (where not only punches but also chairs flew

through the air). Such events are not uncommon in the world's legislatures. In the early years of the U.S. Congress, many legislators attended sessions armed with pistols, and as late as 1856 one of them, Charles Sumner, was beaten senseless on the floor of the Senate by the nephew of an irate political opponent.

Of course, few of us would want to admit any admiration for Russia's parliament. The economy is in shambles and new political and economic structures await construction, while the Congress debates whether to replace old soviet symbols with the imperial double-headed eagle. Should we care about such things when inflation exceeds 2000%? Shrill words, threats of coups, and personal insults reverberate through the halls rather than eloquence and pragmatic discussions of public policy. Why should we be surprised that legislators are fair game as the butt of our jokes and as targets of our frustration.

It remains true, though, that in comparison to the possibilities -- armed insurrection or explicit violations of constitutional principles -- this last session of the Congress was a model of probity and parliamentarism. Committees met, ballots were cast and counted as in any stable democracy, and important choices were made. Those choices might not always have been the ones we might have preferred and it may have seemed at times that the participants were more intent on championing ideological positions rather than practical solutions. Nevertheless, the integrity of the state appears to have survived, and indeed, even Russia survived.

Perhaps the surest sign of success is that almost no one got all they wanted, and extremists got less than anyone else. Only in dictatorships does anyone (the dictator) prevail unambiguously. In a democracy, in contrast, people must compromise, and the noise and disorder that often characterizes this process comes from the fact that we are generally compelled to modify our positions even as we protest, kicking and screaming all the way, any dishonor of deeply held convictions. Equally important is the fact that legislators honored constitutional constraints (even though the constitution itself requires a complete overhaul). Critical issues were frequently decided by a few votes, and yet no troops overturned the result. The losers on some issues (often the majority, owing to the extraordinary majority required to pass constitutional amendments) found ways to claim victory without denouncing the genealogy of their opponents and proceeded to seek victories on subsequent votes. Indeed, despite the noise and rhetoric, Russia seems well on its way toward operating within the constraints of its new constitutional language, fully appreciative of the fact that such language is an important part of stable democratic process.

But none of this means that the current legislative structure will satisfy long-term needs. Some persons argue that a new legislature should be elected immediately; others argue that doing so only increases the likelihood that some autonomous republics will use that opportunity to secede.

Nevertheless, regardless of who prevails in this decision, we should look carefully at what the Congress should set in place before 1995, the date of the next regularly scheduled elections.

First, Russia needs a constitution that unambiguously defines the structure of a legislature to represent all of us and that will stand in permanent session so it can evaluate and formulate policy coherently. Second, the rules under which members of that legislature are selected, including the precise relationship between voters and representatives, must be specified more clearly. And third, whatever changes are made should be made quickly since there is much to be done nationally and regionally before meaningful elections can be implemented.

If the current Congress suffers from an specific malady it is that its members do not have a sufficiently well-defined relationship to those they ostensibly represent. This malady derives from the fact that legislators have not yet contemplated the necessity of running for *reelection* in competitive elections -- indeed, some have never even observed such an election. If there is anything that draws a politician's attention to his or her responsibilities, aside from a knock on the head with a hammer, it is the prospect of competing in an election against someone who will publicly broadcast every personal flaw and every incorrect decision to anyone who will listen.

Undoubtedly, the prospect of competitive elections is frightening to a great many of Russia's legislators. But, of necessity, it will bring order to legislative deliberations, whatever is the ultimate institutional structure of that legislature. The absence of the electoral threat and Russia's inexperience with competitive elections has lead to a fragmented "party" structure within the Congress and the Supreme Soviet. Things labeled parties are not parties at all. They are not organizations designed to present the electorate with alternative policies and programs and to secure votes for those candidates who compete under their labels. Instead, they are, for the most part, protest groups, ideological clusters, cabals, and personal factions designed to advance the careers of specific individuals. With the threat of competitive elections so distant and unfamiliar, there is no need for these "parties" to coalesce, to negotiate seriously their differences with other legislators, or to act so that an electorate views them as offering responsible policy alternatives. In fact, doing so is taken as a sign of weakness, a failure of leadership, and a prelude to dissolution.

In contrast to this characterization, political parties in "mature" democracies are organized for the express purpose of winning elections. They are the devices politicians use to organize support within their constituencies and to communicate to the electorate their policy predispositions and their commitment to a rule of law. Parties organize in this way because voters, concerned about more immediate personal matters, have little reason to devote much time to learning which candidate best represents their interests. If forced to listen to every promise and every prescription for change, they would soon be overwhelmed and confused. Ordinary citizens, then, look for cues as to how to vote,

and one potentially important cue is a candidate's party label. If a party label can be made to convey anything, including the integrity of those who run under its banner, voters will use these labels in deciding who to support. And parties that succeed in associating themselves with attractive policies and attractive candidates will survive; all others will eventually disappear or will be relegated to the sidelines of political events. The imperatives of electoral competition, then, compel legislators to cultivate the labels under which they seek election and reelection, so that members of a party within parliament have an incentive to ensure that their actions are responsible and serve a clear purpose. In this way, the emergence of parties that seek to win votes facilitate order within the legislature.

The absence of the immediate threat of competitive elections also impacts on the internal structure of a legislature. Without such a threat there is no need for legislators to organize themselves so that they can proceed efficiently and in the public's interest. Presently, procedures, committee structures, and debate are organized on an ad hoc basis, since the only compelling force is one's definition of patriotism, unguided personal ambition, or whim.

This is not to say that such motivations cannot lead legislators to support correct policies -- that legislators will not seek to advance Russia's interests without fearing an electorate. There are in fact a great many members of the People's Congress whose only desire is to advance Russia's transition to democracy and to ensure her prosperity. But democracies do not place their faith in the fortuitous of accidental selection of well-intentioned representatives. They place their faith instead in ensuring that legislators will be directed to organize themselves in our interest because to do otherwise would lead us to replace them in the next election.

We do not suppose that legislatures are organized to do "good," or to serve our interest. We assume that they will organize themselves to serve their own self-interest -- that they will reveal their votes when it is in their interest to do so, that they will vote by secret ballot when they fear that doing otherwise will be personally costly, that they will structure their committees to ensure the reelection of those who do the structuring, that they will service the complaints of their constituents only when failing to do so costs them electoral support, and that they will consult experts only when they might be sanctioned for making ill-advised decisions. Hence, what we must do through constitutional design is ensure that their self-interest parallels ours.

Competitive elections are one route to this end. Such elections compel legislators, even those who seek merely to get reelected without any convictions about policy, to develop an internal organization so as to maximize their chances of personal survival. Hence, if we have designed our electoral and representative mechanisms well, legislators will, in developing an internal structure that best suits their purposes, develop a structure that serves our purposes.

Several practical proscriptions follow from this somewhat cynical (but not ill-founded) perspective. First, rather than pay any attention within a constitution to the "correct" organization

of a legislature, that document should focus instead on clear specifications of modes of representation and electoral processes. If a constitution tells a legislature to organize in a way that does not serve its members' interests, then we can be certain that they will soon find ways to operate differently. Constitutional provisions requiring specific committee structures, specific ways of resolving disputes between legislative assemblies, and specific rules of procedure are unenforceable -- they are the first things to succumb to reinterpretation and amendment.

On the other hand, specifying modes of representation and allocating jurisdictional authority as to who will write and oversee election rules are things that lie at the heart of constitutional design. Unfortunately, these are things that require refinement in the current draft constitutions prepared by Russia's Constitutional Commission. For example, that draft requires that members of the lower house, the State Duma, be elected on a territorial basis, which we assume means that the country will be divided into distinct legislative districts so that one or more representative will be elected from each district. But what is left unspecified is who will be responsible for defining these districts. Will it be the governments of the autonomous republics and oblasts that contain them or will it be the national legislature itself? We believe it should be the autonomous republics and oblasts so as to strengthen Russia's federal character, but the jurisdiction of this decision cannot be left to interpretation.

In turn, who will oversee the creation and enforcement of electoral laws? Will autonomous republics and oblasts have the opportunity to determine the rules under which they elect representatives (single-member versus multi-member districts, ballot structures, campaign finance laws) or will these matters be dictated by Moscow? Again, our preference is for local determination of such things for purposes of strengthening federal relationships. But until these matters are resolved, the ambiguity of electoral rules will result in ambiguity of legislative process.

At this point, the reader may wonder how electoral laws -- established in a constitution or elsewhere -- can ever be enforced and remain stable. Why should electoral institutions dictate legislative structure rather than the other way around? What keeps a particular dominant configuration of power and interests within the legislature from manipulating election law so that that law serves only their interests?

In fact, electoral laws are enforceable for a very simple reason -- maintaining those rules will soon be in the self-interest of legislators themselves. On this point, another American example is instructive. It is generally accepted that America's method of electing a president has certain disadvantages, including leaving open the possibility that a popular vote winner will not be elected (as happened in 1824, 1876, 1888, arguably in 1960, and nearly in 1968). Hence, every decade or so its Senate holds hearing to consider a variety of reform proposals. To date, however, nothing much has changed for a very simple reason -- no one is certain that any change will provide as sure a

guarantee of a two-party system as does the current arrangement. On the other hand, one thing is certain -- legislators who must decide any constitutional matter are winners at the game of two-party politics and they have every incentive to maintain that aspect of the game. Winners in any game rarely want to change its rules, since such changes threaten them with the prospect of losers becoming winners. Rarely does the person winning at some card game suggest playing a different game; arguments for change come from the losers. And rarely does anyone winning at roulette prefer to move to some other location in a casino. The same is true in politics. Unsurprisingly, then, the American Republican and Democratic parties have little difficulty in colluding to ensure that third-party candidates have as small a chance as possible at disturbing their competition.

This discussion of how electoral laws become self-enforcing suggests also that those laws should be chosen carefully and in full appreciation of their long-term consequences. Because they will be more difficult to change later, we should be certain that they influence party structures in the right ways. But before we can determine which laws might be most appropriate for Russia, we must consider several other matters that impact on a legislature's performance, including the advantages and disadvantages of a two-chamber legislature and the precise role we can expect a legislature to serve in a federal state.

9. A Two-Chamber Legislature: Isn't One More Than Enough?

All drafts of a new constitution for Russia propose a two-chamber legislature -- a State Duma (the "lower" chamber) and a Federal Council (the "upper" chamber). And, abandoning the idea of Supreme Soviets elected by a larger assembly, both branches will be separately and directly elected. However, in light of the recent display of disarray in the People's Congress, we are entitled to ask why two such creatures are needed when one provides all the entertainment we can tolerate. Wouldn't two chambers vying for power only add to the confusion and to the possibility of an even more dangerous stalemate between the legislature and president? Why create more public officials than we already have? After all, public officials demand salaries, but they do not seem to yield a large return on this investment?

But before we proceed with unrestrained cynicism and use the alleged failings of the current Congress as a basis for predicting the consequences of any new arrangement we should first restate some arguments from our previous essay as to why the future need not be like the past. The key fact is that the character of the current Congress cannot be attributed to the supposition that it is dominated by large numbers of unrepentant communists, entrenched apparatchiks, and faceless mediocrities. Regardless of one's view of the calibre of individual members, a legislature is not merely some simple arithmetic sum of the people in it. Instead, the Congress is what it is because it came into being before anyone knew it was to be a national rather than a republic legislature and

because its members have not yet felt the need to organize themselves into a professional law-giving institution.

We appreciate that it may be difficult to imagine some members of the Congress becoming professional at much of anything. However, the differences between this Congress and a new legislature will not come from any magical process that produces wiser and more deliberative politicians. This difference will come from the ways in which legislators are compelled, by constitutional provisions, to represent the rest of Russia. With the prospect of regularly scheduled and frequent elections -- an especially frightening idea for those who have never confronted such things -- legislators will have to do more than scurry about whispering rumors of cabals or hatching plots. They will instead be forced to take **positive** action, to formulate policy, to draft specific legislation, to learn what it is their constituents want, and to anticipate what policies an election opponent might propose in attempting to unseat them. They will find it necessary to maintain permanent staffs, and to deliberate, hold committee meetings, and vote throughout most of the year. The mouthing of ideological generalities and personal insults will not wholly disappear, but they should subside if only because legislators will fear an electorate that views them as being unprofessional and unable to express and represent their views effectively.

Of course, what we have just said does not address the issue of a two chamber legislature and does not answer the question: Wouldn't it be far simpler and more in keeping with Russia's traditions to retain the present structure and "improve" it merely by holding new elections? So turning to that issue, we note that one argument for two chambers is that this design is the one used most frequently elsewhere. But there are other more practical justifications. First, legislators **represent**, and there are different things that require representation. Second, division makes it more difficult for this branch of government to do stupid or dangerous things. And third, dividing the legislature into two parts protects it from being too easily influenced by those public passions that might otherwise destabilize a country.

The first justification takes us to an important question that will concern any assembly that drafts a constitution. Specifically, who it is that is to be represented -- the citizens of Russia or, because Russia is a federation, its different regions and autonomous republics?

It is generally assumed that the State Duma will represent people -- that the country will be divided into districts and that one member will be elected from each district (at least this is one way to interpret some vague language that requires clarification). So, if every district is contained within a republic or oblast -- within the component parts of the Russian Federation -- then we can say that each such region will be represented by as many legislators as there are districts in its territory. In this way, the Duma represents people and regions simultaneously.

However, if the Duma represents people, then the principle of equal representation requires that each member of the Duma represent approximately the same number of persons as any other legislator. Thus, the proportion of legislators elected from each republic and oblast will be approximately equal to that region's proportion of the population. But now we encounter the objection that some autonomous republics and sparsely populated regions should not be penalized merely because they are less populous than others. And since some regions may fear domination by other parts of the Federation, this concern is likely to generate some contentious debate.

It is for this reason that we introduce a second chamber, the Federal Council, that must also approve legislation before it becomes policy or law. By requiring that all regions have identical representation in the Council (with possible adjustments for autonomous regions within krais), every region has an equal chance of blocking legislation it opposes -- no region is any more or less pivotal than any other.

This compromise with the principle of equal representation of citizens is made because forging a federation is forming an alliance, and a two-chamber legislature is one of the compromises we must make to achieve that end. However, making that compromise raises a number of subsidiary issues that the current draft constitutions resolve without explanation or leave unresolved through vague language. First, why will the State Duma be larger than the Federal Council? Why are the Duma and Council elected simultaneously and for the same terms? What is the meaning of "territorial representation?" Who will determine the rules under which elections are conducted? And who will decide the character of each district of each member of the Duma -- who will draw legislative district boundaries?

Once again, we want to emphasize that these issues cannot be addressed separately. We cannot choose, say, a five-year term merely because this number has been used in the past or because it is the average of some sample of legislatures from other countries. Our choice here must be consistent with some overall idea about what it is we are trying to accomplish with our representative institutions.

To see what we mean, notice that if the only consideration in the creation of a two-chamber legislature is the desire to reach a federal compromise, then we would be unable to explain why so many states, even small non-federal ones, abide by the same format. Britain's House of Lords may exist out of tradition, but what accounts for the upper chambers of Austria, France, or Iceland?

In fact, there are other considerations. First, imagine a country divided into some number of equally populous districts, each of which elects one representative to the legislature. Then a majority of voters in a majority of districts can control all legislation. Since fifty percent of fifty percent equals twenty five percent, as few as one quarter of the population can, theoretically, control the legislature. Normally we would not expect such extreme things to occur. But the bias a single-

chamber legislature allows can create significant tensions when, for example, an urban minority dominates a rural majority, or when, say, agricultural interests predominate over industrial concerns despite a opposite population balance.

There are several ways to correct for such imbalances. One is to draw legislative districts that are homogeneous in terms of the character of the people within them. But this alternative is both impractical when populations are mixed and divisive because, in drawing district boundaries, it pits different parts of society against each other in the struggle for advantage. Another alternative is to elect legislators using nationwide proportional representation. But PR in Russia would only increase the incentives for a highly fractured party system, which is something that Russia ought to avoid. The third possibility is the two-chamber legislature, which accomplishes its purpose since legislation must now secure two majorities, one in each chamber.

It is at this point that we encounter the logic of several other alternative constitutional provisions. Notice that two chambers has the intended effect of making it more difficult for a minority to control the legislature only if their bases of representation are not identical. Otherwise the same voters can control both chambers. Thus, we should avoid electing members of one chamber from precisely the same districts that we elect the members of the other. On the other hand, we do not want to undermine the federal character of the legislature or weaken the incentives for the formation of national parties. Hence, the usual method is to let members of the "upper" chamber represent several lower chamber constituencies by dividing the country's separate regions into lower chamber districts.

This is, of course, the alternative employed in the several alternative draft constitutions for Russia. However, even this precaution is not generally assumed to be wholly adequate. An additional precaution -- one that neither the Rumyantsev nor the Sobchak constitutions consider -- is to elect members of the lower and upper houses to terms of different lengths. Although it may seem reasonable to want to make the government more responsive to public opinion by electing all of the national government at the same time, doing so leaves the government vulnerable to transitory yet intense public passions. Distinct terms of office in which we electing members of the lower house, for example, every three years and one half the members of the upper house every three years for six year terms provides some insurance against this possibility and lends greater stability and continuity to the government.

There remains one last issue that we have not yet discussed. Specifically, assuming that we have resolved the matter of two versus one chamber, of the construction of election districts, and of the length of legislative terms, we must still decide the rules under which legislators will be elected and who will set those rules. Rather than discuss election laws -- a complex matter -- we will focus instead on who should have the authority to choose. And here there essentially three alternatives: (1)

Set the rules in the constitution; (2) relegate their determination to laws passed by the national legislature; and (3) allow those laws to be chosen by the autonomous republics and oblasts.

No method characterizes all countries. Each country must choose in accordance with its special circumstances, and Russia's special circumstance, aside from evident economic problems, her size, ethnic diversity, and the presence of increasingly strident demands for regional autonomy, is the fact that her population is largely unfamiliar with democratic processes. People have voted, but rarely if ever in competitive elections. People have been members of parties, but not in parties they themselves organize to win competitive elections.

For these reasons it is tempting to want to direct things from Moscow. However, as much as political leaders in Moscow might think they know best, people must learn about democratic practice firsthand. And people learn about the necessity for compromise, about participating in politics, and about the roles of political parties only when they have the opportunity to decide issues that concern them and over which they have direct control. These things cannot be learned merely by voting once every four or five years.

Democracy's classroom is local and regional politics, and creating this classroom requires giving local and regional authorities control over those things that do not demand national coordination. And one of those things is the creation, implementation, and enforcement of electoral rules and procedures. In creating rules for themselves, people become expert in their operation and in the compromises that democracy entails. Also, with decentralization, regions can tailor electoral laws to fit their circumstances. There is no reason, for example, why some regions cannot elect their representative to a national assembly by PR while others, with distinct sub-regions, cannot use single-member constituencies so as to guarantee representation of minorities.

Of course, we appreciate the fact that regions will seek to manipulate the selection of these procedures to the advantage of particular persons (although we hesitate to assert that the national government is immune from such incentives). But democracy cannot be imposed wholly from above. By requiring that all forms of local and regional governments protect individual rights and be democratic in other ways, a constitution can give national courts the authority to ensure that explicit discrimination contrary to stated values does not occur.

Admittedly, this discussion may seem to present those who draft constitutions with a dizzying array of alternatives. But the different features of representation that we have discussed in this essay have been designed to give us some flexibility in creating a balance between the need for legislative stability and a legislature that is responsive to the public will. Two chambers reduces the likelihood that the legislature can be captured by some minority or region of the country. They give us a way to ensure that people are represented without undermining the autonomy of regions. And they provide a way to ensure stability and continuity in legislative deliberations. Russia must find its own

balance among these alternatives, but those who would draft and ratify a constitution should understand the choices they confront.

Insofar as predicting how a two-chamber legislature will function, there are, of course, a many additional issues that require examination -- including the relative powers of the two branches and their relationship to the president. Some states place virtually all legislative power in the hands of the lower chamber and make the upper one little more than a ceremonial office. Others give this chamber only limited legislative authority, such as the right to amend the constitution. And still others give both chambers equal roles by requiring that all legislation be approved by both of them. Adding to the range of possible arrangements, those who draft a constitution must also decide which chamber is to be responsible for overseeing presidential appointments. Parliamentary systems generally give this authority to the lower house, whereas presidential systems give it to the upper one. However, whatever decisions are made on these additional issues, the most critical decision concerns the relationship of public officials to the electorate and to the constituent parts of the Federation, since it is that relationship which determines the ultimate character of the state.

10. Do We Have to Vote to be Democratic?

As charges and counter charges of authoritarianism, irresponsibility, and just plain stupidity filled the air in the aftermath of the Congress's unwillingness to confirm Gaidar's position on Yeltsin's cabinet, the only solution to the apparent paralysis of Russian politics seems to be to "go to the people." Let the people speak -- hold a referendum! But what question would voters be asked to answer? Will it be "Should Russia be ruled by a president or the parliament" or "Should the Congress have the right to fire members of the president's cabinet" or "Should the Congress be dissolved and forced to confront new elections" or "Should there be a new presidential election" or "Should there be new elections to choose **everybody**" or "Does Russia need a new constitution" or "Should the Constitution provide for a strong or weak president"? And, of course, there is the procedural issue: "Should the outcome of a referendum be legally binding or merely advisory?"

Regardless of how we answer these questions, the implicit assumption in all of them is that the will of the people as expressed in a general plebiscite is a powerful tool in the hands of those the outcome supports. Who dares resist this will once it is revealed? Who prefers to be labeled 'anti-democratic' or 'authoritarian'? Who could oppose a referendum's conclusion, except in those instances in which the referendum itself is worded so as to preclude anything but a single outcome (as was the case with Gorbachev's Union vote).

But why is it assumed that a referendum can reveal much of anything as important as the 'popular will'? Why does the result of a popular vote on some policy or constitutional issue give special legitimacy to whatever outcome it produces?

The answer to these questions clearly lies in the fact that with its history of totalitarian rule, a popular referendum holds a special status in Russia. For a people with so little experience in voting in meaningful elections, the chance to do so gives their actions uncommon meaning. But if we probe deeper into these sentiments, we see that the special attention given to popular referenda requires two assumptions. The first is that the popular will exists -- that there is something to be discovered or revealed by voting. The second assumption is that a referendum is the most straightforward way to reveal that will. From these two assumptions we can infer a third -- that direct voting on referenda is "more democratic" than other devices.

Formulating laws and making public policy through the indirect instruments of elected representatives and presidents may be required if we want to treat the complexity of public affairs in an orderly way. Nevertheless, it seems reasonable to suppose that an outcome determined by a direct appeal to the public has more legitimacy than any other. Because elected officials can be corrupt or otherwise insensitive to public needs and preferences, the argument continues, it is best, whenever feasible, to consult the public directly on important matters.

Certainly, a healthy respect for public opinion is not something that ought to be minimized. When it is minimized or ignored, democracy disappears. But none of the assumptions we have set forth to justify an exalted position for the outcomes of referenda is generally valid, and this fact brings into question the extent to which Russia should rely on plebiscites for resolving contentious and divisive issues.

Consider first the matter of the existence of a popular will. Certainly this will exists if preferences are unanimous. But in this instance there is rarely a need to learn that will through referenda; no voting is required to justify the assumption that a prosperous and stable Russia is a socially desirable outcome. So suppose we want to learn the popular will when preferences are something other than self-evident and unanimous. In this instance, we need a rule with which to define that will, and the most generally accepted rule is majority rule.

Of course, we are not always willing to abide by this rule. For example, even if a majority prefers to exclude someone from, say, participating in politics because they do not like his or her ethnic identity, we should not want to violate anyone's civil liberties and individual rights merely because a majority prefers to do so. It is for this reason that we sometimes remove decisions from politics and move them to things like the courts which may operate by different and more stringent rules.

In any event, suppose we are contemplating an issue in which people agree that majority rule is appropriate -- that if policy A is preferred by a majority to policy B, then A is regarded as socially preferred to B. However, as our initial questions suggest, we cannot suppose that all major issue can always be reduced to two alternatives. Those who would draft a new constitution for Russia, for example, do not confront a simple choice between a strong president versus a strong parliament --

there are countless ways to form the relationship between the different branches of government. And the issue confronting Russia is not simply whether to hold new elections today or in 1995. We must also decide the form of those elections, the form of the legislature, and the relationship of the national government to the different parts of the Russian Federation.

The important fact, now, is that whenever there are more than two alternatives, we encounter problems when using majority rule to reach any definitive determination of the "public will." To see what we mean, suppose a majority prefers policy A to B, and a majority prefers B to some third policy C. Thus, it appears that A ought to be selected. But notice that we have said nothing about the relationship between A and C. Since A is preferred to B and B is preferred to C, we might infer that A is preferred to C. However, this need not be so. For example, suppose alternative A calls for new legislative elections; B for no elections whatsoever; and C is for a new presidential election. Suppose one part of society, say Yeltsin's strong supporters, prefers A to B to C. Suppose a second part, fearful of what new elections might bring but disgusted with Yeltsin, prefers B to C to A. Finally, suppose the last part, disgusted with everyone but especially the Congress, prefers C to A to B. Notice now that if each of these groups is equally numerous, then A is preferred to B by a majority (parts 1 and 3), B is preferred to C (parts 1 and 2), and yet C is preferred by a majority to A (parts 2 and 3).

This example, although not intended to be realistic, is important for several reasons -- the most important one being that, since A, B, and C are each defeated in a majority vote by something, there is no popular will to be discovered. Nothing stands highest in the preferences of society, and nothing can lay unambiguous claim to being "socially most preferred." Hence, the first assumption justifying the legitimacy of outcomes produced by referenda -- that a popular will exists to be discovered by a referendum -- is not valid in all circumstances.

Our example also shows that, instead of revealing a popular will, referenda can artificially manufacture that will and gives politicians the opportunity to manipulate events. Notice in particular that since a referendum typically allows a choice between only two alternatives -- since most referenda are framed in yes-or-no form -- then the final outcome in our example is determined wholly by which two alternatives are considered. If the referendum reads: "Should a new presidential election be held (A versus C)" then the outcome is C; if the referendum reads "Should new parliamentary elections be held (B versus C)?" then the outcome is B; and if the referendum reads "Should the president or the Congress be subject to new elections" (A versus B) the outcome is A. Employing a referendum, then, merely give those who can form the alternatives an opportunity to manipulate decisions rather than reveal anything about the public's preferences.

We emphasize that this critique of referenda does not employ any assumption about the inability of a voter to hold sincere and informed opinions. Our argument does not require that we agree with

Alexander Hamilton, one of the framers of the American constitution, when he asserted that "the voice of the people has been said to be the voice of god; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right." What Hamilton believed may be true, and precautions may have to be taken against such possibilities. But our concern with referenda is that even with a fully informed electorate, they can give a false picture of things. They can lead us to think that there is a popular desire to move in one direction when there is no agreement whatsoever about direction.

In fact, voting in a democracy plays a different role than allowing the public to determine policy directly, and it is an error to confuse democracy with any such device. So to see voting's role and to see what is THE essential component of democracy, consider again the method for deciding issues that is implicitly or explicitly rejected whenever a decision is taken to turn to popular referenda to decide issues -- representative democracy.

Suppose our elected representatives (legislators, presidents, governors, and so on) are somehow sensitive to the preferences of those whom they represent and serve. Then if there is no popular will, those representatives should be able to learn this fact. Indeed, they will have positive incentives to do precisely that, out of fear that their election opponents will take advantage of their ignorance. In addition, they will also have an incentive to learn something that referenda cannot reveal -- the intensity with which preferences are held. In this way, they will be in a better position to invent new alternatives, to weight differences in intensity, to evaluate the "fairness" of different policies, and to negotiate compromises. Of course, they will not necessarily do this out of good-will -- they will do it to preserve their positions.

This is not to say that the current Congress is capable of doing any of these things. To repeat our argument from earlier essays, members of Congress have not yet adjusted to the imperatives of democratic elections. Nevertheless, we suspect that the confusion we see there reflects the fact that, given the current turmoil in the economy, there is no well-defined public will as much as it reflects anything else. The Congress suffers from the malady of not only not being democratically elected or threatened with the immediate prospect of competitive elections. But it also suffers from the malady of trying to represent a population with incoherent preferences. Everyone agrees that current circumstances are unacceptable -- everyone wants a stable currency, a prosperous economy, a guarantee of individual rights, and some certainty of social rights. But what is the "popular will" with respect to the policies that must be implemented to achieve these ends? Because there does not exist any popular consensus on means, the conflicts within the Congress as well as between the Congress and the president that so entertained us, although far less structured and civil than we might prefer, are merely a reflection of society.

With this argument in hand, we can now see what a democracy is and what the role of voting is in it. Put simply, voting is the device the people use to choose their leaders, to choose those who they think represent their positions and preferences most effectively, and to replace those who they do not think have performed their jobs well. Political systems that allow the people to change their leaders through competitive elections are democracies -- all other systems are something else. A system that allows people to decide things by referenda -- even important things -- but that relegates the design of those referenda and all other decisions to an unelected elite are not democracies.

Thus, the answer to the question that forms the title of this essay is YES. But our answer does not necessarily apply to voting on referenda. In evaluating a constitution, we should not focus on the opportunities it provides for deciding issues directly, or even on the power it gives to a president or the legislature to call plebiscites. These things determine the relative power of those who can call or design referenda with respect to the other parts of government; they do not always increase the power of the voters themselves. Of far greater importance in determining the responsiveness of public officials to the people are constitutional guarantees of meaningful and competitive elections. Will elections be held with sufficient frequency (is it advisable to allow all elected officials to serve for five-year terms)? Who controls the rules under which elections are held (we should be certain that they are not controlled by those who are directly governed by those rules, lest they manipulate the rules to their own advantage)? What direct and indirect measures does a constitution contain to assure that elections will be competitive (does the constitution offer promises of campaign funds that a majority party can manipulate)?

It would appear, then, that we do not see any role for referenda in a democracy. In fact, that is not our position. We should not ignore the fact that referenda are important devices for bringing issues to the attention of voters and, if used properly, that they can be a device whereby voters constrain the actions of politicians and other public officials. For example, voters in Switzerland can veto legislation that affects their taxes and, in local elections in the United States, voter approval may be required before officials are allowed to increase public indebtedness (voters everywhere should be on their guard against the incentives of politicians to "spend now and pay later").

The key feature of these examples is referenda are a regular part of the political process. And, more importantly, they are something other than a way for presidents or legislators to augment their political power. Because they are something other than glorified public opinion polls, voters have an incentive to become better informed about the things over which they have some influence. They are voting over something other than vague generalities that place them at the mercy of demagogues. As such, referenda can be a powerful inducement for voters to become better informed. But we hasten to add that even in these societies, referenda cannot substitute for the power voters possess in

deciding who shall lead or represent them. Referenda are merely an auxiliary control and not the key element of a democracy.

As a caveat to this discussion, we offer the opinion that holding a referendum to decide constitutional issues, to resolve conflicts within the Congress or between the Congress and Yeltsin, are little more than abdications of responsibility. It is not that the Congress cannot act because they do not know the will of the people. They cannot act because that will is non-existent and because incentives are too weak to force hard decisions. Perhaps a constitutional referendum is required to break the logjam. Perhaps even an artificially created popular will is better than the present confusion. Perhaps we should temporarily suspend our reservations about the usefulness of referenda, if only to get things moving in *some* direction. But in doing so, we should appreciate that such referenda are merely stop-gap measures, and cannot substitute for an election that threatens to "throws the bums out."